

**COMPREHENSIVE
AGREEMENT**

Between

WESTERN VIRGINIA REGIONAL JAIL AUTHORITY

And

Howard Shockey & Sons, Inc.

CONSTRUCTION OF A NEW JAIL

Date February 9, 2007

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EXHIBITS

- A – not used
- B – not used
- C – Clarifications and Assumptions (1 page)
- D – Guaranteed Maximum Price (1 page)
- E – Draw Schedule (2 pages)
- F – Payment Application (8 pages)
- G – Project Schedule Milestones (1 page)
- H – Interim Agreement and Addendum (5 pages)
- I – Vendor's Certification (1 page)
- J – Project Closeout (2 pages)
- K – Extensions to Agreement Times due to Unusually Severe Weather (1 page)

THIS COMPREHENSIVE AGREEMENT ("Agreement") is dated and effective as of this 9th day of February 2007 (the "Effective Date" and/or "Contract Date"), by and between: **WESTERN VIRGINIA REGIONAL JAIL AUTHORITY**, an instrumentality exercising public and essentially governmental functions of the Commonwealth of Virginia ("Owner" or "Authority"), and **HOWARD SHOCKEY & SONS, INC.**, a Virginia corporation ("Private Entity") of Winchester, Virginia.

Recitals:

R-1. On June 13, 2006, the Owner adopted procedures to implement the Virginia Public-Private Education Facilities and Infrastructure Act of 2002, as amended, ("PPEA"), Va. Code 56-575.1, et seq.

R-2. The Owner subsequently solicited proposals for the Project pursuant to the PPEA.

R-3. The Owner accepted the solicited proposals for consideration. The Owner determined in writing that proceeding with the procurement that was the subject of the proposal using competitive negotiation procedures was likely to be advantageous to the Owner and the public based upon probable scope, complexity, or urgency of the Project, risk sharing and added value, and/or economic benefit from the Project.

R-4. The Owner received three conceptual-phase proposals and it subsequently invited the three proposers to submit detailed-phase proposals, which the proposers did. The Private Entity was one of these proposers.

R-5. The Owner determined that the Project is a qualifying project that serves the public purpose of the PPEA and would be in the public interest to pursue.

R-7. Based upon the Private Entity's proposal, estimated price and presentation, Owner has selected Private Entity for entry into a comprehensive agreement for the Project, and the Owner and Private Entity now wish to enter into this Comprehensive Agreement for the Project.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants hereinafter contained, and subject to the conditions herein set forth, the parties hereby covenant, agree, and bind themselves as follows:

ARTICLE I

DEFINITIONS

Unless the context otherwise specifies or requires, the following definitions apply to this Agreement:

- 1.1. **Architect - Engineer ("A-E")** means Owner's design professional firm(s) responsible for the architectural and engineering services for the Project, including its design.
- 1.2. **Change** means any addition to, deletion from, or modification of the Project or the Services that is made in accordance with the provisions of Article XVII of this Agreement.
- 1.3. **Change Directive** means a written order by the Owner, specifically identified as a Change Directive, directing a Change, in accordance with the provisions of Article XVII.
- 1.4. **Change Order** means a Change made by a written agreement in which the Owner and Private Entity have indicated agreement as to the Change and adjustments to price and/or schedule due to the Change in accordance with the provisions of Article XVII.
- 1.5. **Codes and Standards** means all local, state and federal regulations, ordinances, codes, laws, or requirements applicable to the Project, including, without limitation, the most current Virginia Uniform Statewide Building Code.
- 1.6. **Contract Cost Limit ("CCL")** means the initial limit established at the time of execution of the Interim Agreement on total amounts payable to the Private Entity under the Interim Agreement. This cost limit shall not be exceeded in the Comprehensive Agreement's GMP.
- 1.7. **Contract Documents** means the following listed in their order of precedence:
 - (a) Any written modifications to this Comprehensive Agreement made in accordance with this Comprehensive Agreement;
 - (b) This Comprehensive Agreement, including all exhibits thereto;
 - (c) Any written Change Orders made in accordance with this Agreement;
 - (d) Any written Change Directives issued in accordance with this Agreement;
 - (e) Construction Documents, which are the final Plans and Specifications that are approved by the Owner (except that (i) the provisions of the modified AIA Documents A101 and A201 referenced in the Owner's bid documents are superceded by this Agreement and the other Contract Documents and (ii) the provisions of the modified AIA Document A201 shall be incorporated as part of the Contract Documents, but only to the extent that any of the subject matter addressed therein is not address in any of the Contract Documents);
 - (f) Plans and Specifications dated September 18, 2006, and Addenda #1 dated October 2, 2006, Addenda #2 dated October 16, 2006 and Addenda #3 dated October 24, 2006, that are approved by the Owner;
 - (g) Documents incorporated by reference in this Agreement;
 - (h) Private Entity's Response to Request for Price Proposals dated October 31, 2006; and
 - (i) Private Entity's Response to Request for Qualifications dated July 31, 2006.
- 1.8. **Contractor or Prime Construction Contractor.** Since the Private Entity is acting as the contractor or prime construction contractor for construction work on this Project, then Contractor or Prime Construction Contractor means the Private Entity. In some cases, the Contractor or Prime Construction Contractor may be the entity to which the Private Entity subcontracts the construction work portion of its responsibilities.
- 1.9. **Day** means a calendar day, and "days" mean calendar days, unless the contrary is expressly indicated.
- 1.10. **Defect, Defective, or Deficient** is an adjective or noun which when modifying or referring to the word Work refers to Work or any part thereof that is unsatisfactory, faulty, or does not conform to the Contract Documents, or does not meet the requirements of any inspections, standards, tests or approvals referred to in the Contract Documents.
- 1.11. **Draw Schedule** means the non-binding estimate of payments to be used by the Owner for cash flow planning purposes.
- 1.12. **Fixed Fees** mean the amounts payable to the Private Entity as specified in Section 5.5 for the Services in addition to Reimbursable Costs.
- 1.13. **Final Completion of Work, Final Completion or final completion** means completion of the Project in conformance with this Agreement, the Construction Documents, and other Contract Documents of all of the work required by this Agreement, including without limitation, punch list items,
- 1.14. **Guaranteed Maximum Price ("GMP")** means the amount, not exceeding the CCL, established following the Owner's approval of any Private Entity or Owner suggested cost reduction design suggestions. The GMP is the maximum amount payable to the Private Entity absent a Change.
- 1.15. **Interim Agreement** means the initial agreement dated January 2, 2007 along with the addendum dated January 29, 2007, and signed by both parties as a precedent to the Comprehensive Agreement that set the general parameters and Contract Cost Limit for the Comprehensive Agreement. A copy of the fully-executed Interim Agreement and addendum thereto is attached as Exhibit H.
- 1.16. **Land** means the real property described in Exhibit A hereto.
- 1.17. **Owner** or "Authority" means WESTERN VIRGINIA REGIONAL JAIL AUTHORITY.
- 1.18. **Owner's Representative** means that person designated by the Owner in writing to perform the functions of Owner's Representative specified in this Agreement.
- 1.19. **Person** or person means any individual, partnership, joint venture, association, joint-stock company, corporation, limited liability company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other legal entity.
- 1.20. **Plans and Specifications** mean the surveys, plans and specifications that Owner has prepared for the Project and that are approved by the Owner, A-E, and Private Entity.
- 1.21. **Private Entity** means Howard Shockey & Sons, Inc., a Virginia corporation.
- 1.22. **Project or project** means the complete and proper construction of a new jail facility as called for in the Contract Documents, to be constructed by Private Entity on the Land in accordance with the Construction Documents and the terms of this Agreement, and any related upgrades and/or modifications ordered by Change, Change Order, or Change Directive.

- 1.23. Project Schedule means the schedule for construction of the Project, which, in its initial version, is set forth in Exhibit G attached hereto.
- 1.24. Punch List Items means a list of items of work to be completed and deficiencies to be corrected, identified by the Owner's Representative and A-E that do not affect the attainment of Substantial Completion. Such items must be complete before Final Completion can take place.
- 1.25. Reimbursable Costs mean the amounts payable to the Private Entity as specified in Section 5.4 for the Services in addition to the Fixed Fees and any amounts payable pursuant to a Change.
- 1.26. Requisition means an application for payment in the form attached as Exhibit F.
- 1.27. Scope of Work or Work or work means all the work and materials required to deliver the Project in accordance with the Contract Documents, all of which shall be provided by Private Entity within the GMP, which is set forth in Exhibit B attached hereto, except as may be modified by any Change.
- 1.28. Services means all pre-construction and development services and all procurement and construction services related to the Project furnished by Private Entity, including, without limitation, all labor, services, materials and facilities, and all other things that are required to provide for the development of the site, construction and equipping of the Project so that such Project is properly completed in accordance with the Contract Documents.
- 1.29. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, that as a condition precedent to Substantial Completion, (i) the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project, and (ii) the Contractor has fulfilled any and all obligations under the Contract Documents for issuance of a certificate of Substantial Completion by the Architect Engineer.
- 1.30. Unusually Severe Weather means weather that impacts major work activities on the critical path of the Project and deviates significantly from that which could be reasonably expected due to the time of year or as compared to standard averages for the area as compiled through the NOAA or other authorized local sources. See Exhibit K.

ARTICLE II

GENERAL DESCRIPTION, TERM OF AGREEMENT, AND PRIVATE ENTITY'S STATUS AS INDEPENDENT CONTRACTOR

2.1. GENERAL DESCRIPTION.

Under this Agreement, Private Entity will be providing to the Owner construction services for the Project in full accordance with the Contract Documents. Private Entity will be providing these services as a construction contractor. Private Entity generally will be compensated Reimbursable Costs plus Fixed Fees subject to the terms of this Agreement but will be responsible for ensuring that the total cost of the Project to Owner does not exceed the Guaranteed Maximum Price (GMP) established by this Agreement. Private Entity will be responsible for completing the Project so that payments by Owner will not exceed the GMP, except as may be adjusted by this Agreement, even if the costs to Private Entity to do so exceed the GMP.

2.2. TERM OF AGREEMENT.

This Agreement begins on the Effective Date indicated at the beginning of the Agreement, which is the date of approval by the Owner of this Agreement, and continues until its termination pursuant to Article XVIII, any other provision of this Agreement, or by law, or until all obligations under this Agreement have been properly and fully performed.

2.3. INDEPENDENT CONTRACTOR.

For all purposes hereunder, Private Entity is an independent contractor and shall not be deemed an agent, employee or partner of the Owner.

2.4. SUBCONTRACTORS.

- a. Private Entity may subcontract any portion of the Services to be performed hereunder, but Private Entity shall not thereby be relieved of any of its obligations set forth herein. Private Entity may subcontract the construction work to a contractor ("Contractor" or "Prime Construction Contractor"). Private Entity shall use the Prime Construction Contractor proposed in its proposals unless the Owner, in its sole discretion, approves otherwise in writing. Private Entity has furnished to the Owner's Representative for its information, a list of all Persons being considered to be subcontractors to the Prime Construction Contractor, and the Owner's Representative has notified the Private Entity in writing of any objection to any such subcontractor. A failure to notify Private Entity shall not waive the right of the Owner's Representative to later object to any proposed subcontractor for cause. The receipt of such list shall not require the Owner's Representative to investigate the qualifications of any listed subcontractor. If Owner objects to any subcontractor, then Private Entity shall be entitled to a Change Order for any costs, increased prices and/or delays arising from the need for Private Entity to replace such subcontract with one or more other subcontractors of Private Entity's choice.
- b. Prior to performing any Work on the Project, the Contractor and subcontractors shall provide copies of their current licenses to the Owner's Representative. Private Entity shall ensure that all such subcontractors shall be properly licensed and authorized to do business in Virginia, shall have the proper insurance coverage, and shall comply with all state, federal, and local laws relating in any way to the Project, including obtaining any necessary County business license. The Private Entity shall comply with Title 54.1, Chapter 11, of the Code of Virginia, with respect to licensure of itself and all subcontractors employed to work on the Project. The Private Entity represents that it has verified that all subcontractors hold all required state and local licenses, including State Contractor's license and County business license. The Private Entity shall verify that any additional subcontractors employed to work on the Project, subject to initial verification, hold all required state and local licenses, including State Contractor's license and County business license. Private Entity is required to submit the Contractor's Certification as to Licensure of Subcontractors Form to the Owner. This constitutes a material part of the Private Entity's Agreement with the Owner.
- c. Subcontractors shall not be changed without the written approval of the Owner's Representative, which shall not be unreasonably withheld.
- d. Private Entity further agrees that it is as fully responsible to the Owner for the acts and omissions of its subcontractors, suppliers, and invitees on the jobsite and of persons either directly or indirectly employed by them, as the Private Entity is for the acts and omissions of Persons directly employed by it.

ARTICLE III

THE WORK

3.1. WORK/SPECIFICATIONS.

- a. The Private Entity shall furnish all necessary personnel, material, equipment, services, and facilities (except as otherwise specified) to fully and properly perform the Project in a good and workmanlike manner in accordance with the Contract Documents and within the Project Schedule, time being of the essence for this Project.
- b. The Owner shall have the right to add to the Scope of Work to be performed under this Agreement, including, without limitation, work to be performed at the Project, and Private Entity agrees to perform such work, subject to issuance of a Change Directive or a Change Order for such work. Private Entity agrees to promptly meet and confer with the Owner regarding added scope of work proposed by Owner.
- c. The Owner requires that the Private Entity perform a complete and satisfactory job in accordance with the Contract Documents.
- d. It is the Owner's intent that the Construction Documents represent the design of a fully functional and properly operating facility, and the Private Entity's responsibility is to construct in accordance with these documents, ensure that all materials, equipment and systems have been installed in accordance with the design, and they are functioning and properly operating in accordance with the Construction Documents prior to Final Completion so that the facility can be used for its intended use. The Private Entity recognizes the reliance of the Owner on the expertise of the Private Entity in the construction of similar projects, and therefore the Private Entity has the responsibility commensurate with its experience to notify, within ten (10) days of discovery, the Owner's Representative of any discrepancies.
- e. The Private Entity acknowledges and agrees that it has taken into account in its proposal the requirements of the RFP and Contract Documents, local conditions, availability of material, equipment, labor, and any other factors which may affect the performance of the Work. The Private Entity agrees and warrants that it will properly and fully complete the Work not later than the time period or date indicated for completion.

3.2. CONDITIONS AFFECTING THE WORK.

- a. The Private Entity is responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions that can affect the work or its costs, including, but not limited to available parking and staging areas and existing building materials and components. Any failure by the Private Entity to reasonably ascertain the conditions affecting the work does not relieve the Private Entity from responsibility for successfully performing the work without additional expense to the Owner. The Owner assumes no responsibility for any representations concerning conditions made by any of its officers, employees or agents before execution of this Agreement unless such representations are expressly stated in the Contract Documents.
- b. Owner has furnished Private Entity copies of the following reports about which Owner makes no representation or warranty regarding their accuracy:
 - 1) Report of Subsurface Exploration prepared by Geotechnics, Inc., included in the specifications, dated 6/30/06 (Appendix A) and 10/20/05 (Appendix B).

3.3. INTERPRETATION OF CONTRACT DOCUMENTS.

- a. The Contract Documents are intended to be complementary and to be interpreted in harmony to avoid conflict if this can reasonably be accomplished.
- b. The following rules regarding correlation and intent of the Contract Documents are first to be employed in the event of any inconsistency, conflict, or ambiguity: (1) Anything mentioned in the Specifications and not shown on the Plans, or shown on the Plans and not mentioned in the Specifications, is of like effect as if shown or mentioned in both; (2) In case of conflicts between Plans and Specifications, the Specifications will govern; (3) In case of a difference between small and large-scale drawings, the large-scale drawings will govern; (4) Schedules on any contract drawing take precedence over conflicting information on that or any other contract drawing; (5) On any of the drawings in which a portion of the work is detailed or drawn out and the remainder is shown in outline, the parts detailed or drawn out will apply also to all other like portions of the work.
- c. If, despite application of the rules in 3.3b, an inconsistency, conflict, or ambiguity still exists between or among the Contract Documents that cannot be reasonably harmonized, then precedence shall be given to the Contract Documents in the order in which they are enumerated in paragraph 1.7. of this Agreement.

ARTICLE IV

PROJECT DEVELOPMENT

4.1. DESIGN.

The Owner shall be responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, plans, specifications, and other services and/or materials furnished by the Owner under this Agreement. In addition, the Owner shall be responsible for the functionality and Code/Standards compliance of the Project's design. The Private Entity assumes no responsibility for any element of any of the designs, drawings, plans, specifications and other services and/or materials furnished by the Owner.

4.2. CONSTRUCTION.

With Owner's prior agreement in writing, construction may be allowed to commence in accordance with the Project Schedule.

ARTICLE V

PRICES AND SHARED SAVINGS

5.1. PRICES.

The Private Entity must provide all work called for under this Agreement, including furnishing all material, services, labor and equipment to perform the Services for the prices as indicated in Exhibit D.

5.2. CONTRACT COST LIMIT ("CCL")

A Contract Cost Limit (CCL) was the initial cost limit established at the time of execution of the Interim Agreement. This cost limit shall not be exceeded in the Comprehensive Agreement's GMP.

5.3. GUARANTEED MAXIMUM PRICE ("GMP")

- a. The GMP is the maximum sum that the Owner shall pay to the Private Entity in total for this Project, except as may otherwise be provided in this Comprehensive Agreement. It includes, but is not limited to all construction labor, materials, expenses, permits, utility fees and equipment needed to properly complete the Project.
- b. The Private Entity and Owner proposed cost reduction design suggestions that have been reviewed and approved by the Owner, in order to arrive at a Guaranteed Maximum Price (GMP) that is less than the CCL. These suggestions are attached as Exhibit C.
- c. If at any time during construction it becomes apparent that the final Project costs will exceed the GMP, the Private Entity shall immediately notify the Owner's Representative and advise him/her of the action it proposes to take to reduce costs to be within the GMP.
- d. All proposed revisions or changes to the approved Plans and Specifications must be submitted to the Owner's Representative in writing for review and approval regardless of whether or not they affect the GMP.
- e. Private Entity shall ensure that the GMP amount is not exceeded (except as may otherwise be provided in this Agreement), but if such amount is exceeded, Private Entity shall be solely responsible for any such excess amount as adjusted for any Changes.
- f. No payment shall be made to Private Entity in excess of the GMP except as may be adjusted for any Changes made in accordance with this Agreement. The Private Entity shall be wholly responsible to complete the Project at no compensation above the GMP except as may be adjusted for any Changes made in accordance with this Agreement.

5.4. REIMBURSABLE COSTS

- a. Subject to the limitation that payments to Private Entity shall not exceed the GMP (except as may otherwise be provided in this Agreement), Owner will reimburse Private Entity for all the following Reimbursable Costs for the Project:
 1. Prime Construction Contractor materials, supplies, and equipment either incorporated directly into the construction on the Project or required to accomplish a construction activity on the Project including equipment rental, transportation, and storage.
 2. Prime Construction Contractor Labor: Labor costs for personnel performing labor on the Project. Labor costs include hourly rates with all fringe benefits and taxes required by law and applicable contracts in force between the Contractor and its employees.
 3. Subcontractor costs for work on items directly related to and/or incorporated into the finished construction for the Project. The term "subcontracts" includes purchase orders. Private Entity shall share the results of its subcontractor bid process on an "open book" basis. Copies of all subcontracts, including all modifications and/or revisions will be furnished to the Owner's Representative within five business days from issuance.
- b. Owner will not reimburse Private Entity for the following costs:
 1. Prime Construction Contractor costs *not* associated with personnel assigned to the Project are considered to be indirect costs that are included as part of the Fixed Fees and are not Reimbursable Costs. Examples of indirect costs that are not Reimbursable Costs include, but are not limited to: bonuses to senior executives, travel by company executives or officers, and personnel whose services and/or responsibilities include multiple projects, e.g., accounting, home office estimating, and purchasing personnel. Additionally, costs for repairs and maintenance of Contractor-owned equipment (including by any subsidiary or affiliated companies) or rental equipment are not Reimbursable Costs. Repair costs and costs of routine maintenance of rental equipment are to be included in the rental price.
 2. Advertising, bad debts, contributions and donations, dividends or payments of profits, entertainment, fines or penalties, life insurance for officers, partners, or proprietors, interest on loans, lobbying, losses on other contracts, income taxes, proposal preparation costs and legal costs involving disputes with the Owner.
 3. Costs incurred prior to the Effective Date of this Agreement.
- c. Expenditures from the Private Entity's Contingency must be approved in advance by the Owner's Representative, whose approval will not be unreasonably withheld. The Private Entity must submit a completely documented request for the Owner's Representative's review and approval justifying why the request is not included in the GMP. The parties agree that any excess Contingency at the completion of the project shall not be subject to shared savings, as indicated in paragraph 5.7. If the cost of the project exceeds the GMP as adjusted for any Changes, including the full amount of the Contingency, the Private Entity shall be solely responsible for any such excess amount above the GMP as adjusted for any Changes.

5.5. FIXED FEES

- a. The Owner shall pay the Private Entity Fixed Fees, which consist of the Private Entity fees and expenses, and general contractor fees stated in Exhibit D. The Fixed Fees include all compensation payable by Owner to Private Entity beyond Reimbursable Costs for the Services and are intended to compensate for the Private Entity's home office support, overhead costs, and profit for the Project. The Fixed Fees will not vary with either the estimated cost or actual cost of construction of the Project except as expressly allowed in this Section 5.5. The components of the Fixed Fees in b. through c. below will be increased when a Change in the Project results in a significant increase in the direct costs, such as an increase in insurance costs. The Fixed Fees will not be reduced unless the Owner and the Private Entity agree to an equitable reduction in the Fixed Fees for any Change that substantially reduces the Scope of Work.
- b. Private Entity's Fees and Expenses: Legal, insurance and accounting (project related); general conditions, payment and performance bonds, permits, utility availability and usage costs, "on site construction" supervision, quality control, safety, training, engineering/layout, fire protection, cleanup, and field office equipment and operation.
- c. General Contractor Fee during Construction: This component of the Fixed Fees covers overhead and profit on construction plus home office overhead costs.

5.7. SHARE IN SAVINGS.

If the final Project Reimbursable Costs plus Fixed Fees, as presented by Private Entity within sixty (60) days after Final Completion and then reviewed and audited by the Owner, are less than the GMP, as adjusted for any changes made in accordance with this Agreement, then savings represented by the difference shall be shared on the following basis: Savings will be shared as follows: 25% to the Private Entity and 75% to the Owner. As stated in paragraph 5.4.c above, the Contingency amount of the GMP as indicated in Exhibit C shall not be subject to Shared Savings.

ARTICLE VI

SAMPLES

6.1. SAMPLE APPROVAL.

After issuance of the notice to proceed with construction, the Private Entity shall furnish to the Owner's Representative samples required by the specifications, for the Owner Representative's approval. The Owner's review and approval shall not be unreasonably withheld, conditioned, or delayed and shall be made in a time frame so as not to delay the Private Entity or Contractor. Samples shall be delivered to the Owner's Representative as specified or as directed. The Private Entity shall prepay all shipping charges on samples. Materials or equipment for which samples are required may not be used in the work until the Owner's Representative approves them in writing. Approval of a sample is only for the characteristics or use named in the approval and may not be construed to change or modify any requirement of the Contract Documents. Substitutions are not permitted unless approved in writing by the Owner's Representative.

6.2. LABELS.

Each sample must be labeled to show:

- a. Name of Project building or facility, Project title, and contract number;
- b. Name of Private Entity and (if appropriate) Prime Construction Contractor and subcontractor;
- c. Identification of material or equipment, with specification requirement;
- d. Place of origin; and
- e. Name of producer and brand (if any).

6.3. MARKINGS.

Samples of finish materials must have additional markings that will identify them under the finish schedules.

6.4. COVER LETTER.

The Private Entity shall mail under separate cover a letter, in triplicate, submitting each shipment of samples and containing the information required in Sections 6.2 and 6.3 above. The Private Entity shall also enclose a copy of that letter with the shipment and fax or send a copy to the Owner's Representative on the Project.

6.5. USE OF SAMPLES.

Approved samples not destroyed in testing will be sent to the Owner's Representative at the Project. Approved samples of hardware in good condition will be marked for identification and may be used in the work. Materials and equipment incorporated in the work must match the approved samples. Samples not destroyed in testing and not approved will be returned at the Private Entity's expense if the Private Entity so requests in writing at the time of submission.

6.6. FAILURE.

Failure of any material to pass the specified tests will be sufficient cause for refusal to consider, under this Agreement, any further samples of the same brand or make of that material. The Owner reserves the right to disapprove any material or equipment that has previously proved unsatisfactory in service.

6.7. TESTING.

Samples of materials or equipment delivered on the site or in place may be taken by the Owner's Representative for testing. Failure of a sample to meet the requirements of the Contract Documents may void previous approvals of the item tested. The Private Entity shall replace materials or equipment found not to have met requirements of the Contract Documents, unless Owner, in its sole discretion, elects to accept an equitable downward adjustment to the GMP in lieu of such replacement.

6.8 COST OF TESTING.

The Owner and Private Entity each shall pay for all costs of construction testing as provided in the specifications. The Private Entity shall provide written reports of observations, recommendations, and its testing activities as the Project progresses. The Private Entity shall make a written report on a biweekly basis to the Owner. All Private Entity tests pertaining to physical or chemical properties of materials must be made in a laboratory approved by the Owner's Representative. The Owner will pay for the costs of any additional tests the Owner deems necessary, including those related to engineering services, unless such tests indicate that the workmanship or materials used by the Private Entity are not in conformance with the Construction Documents, approved shop drawings, or the approved materials. In this event, the Private Entity shall pay for the tests, remove all work and material failing to conform, and replace with work and materials in full conformity, without additional cost to the Owner, and to the Owner's satisfaction.

6.9 INVENTORY OF SAMPLES.

The Private Entity shall maintain an inventory of all approved samples until final inspection of the Project. Such samples shall be available to Owner for additional viewing, inspection and testing, as deemed necessary by Owner, at all times.

ARTICLE VII

MEASUREMENTS, DRAWINGS, SPECIFICATIONS

7.1. REQUIREMENT FOR VERIFICATION OF MEASUREMENTS/ON SITE DOCUMENTS.

- a. The Private Entity shall keep at the site copies of all drawings and specifications related to the Contract Documents and shall at all time give the Owner's Representative and any designated representative access to them.

- b. When the word "similar" appears on the drawings, it has a general meaning and must not be interpreted as meaning identical, and all details must be worked out in relation to their location and connection with other parts of the work.
- c. In case of discrepancy either in figures, drawings, or specifications, the matter must be promptly submitted to A-E, who shall provide a determination in writing, for approval by the Owner's Representative in writing. Any adjustment by the Private Entity without such approval will be at the Private Entity's own risk and expense. The Private Entity shall furnish from time to time such detailed drawings and other information as may be deemed reasonably necessary by Owner's Representative.
- d. Any discrepancies between the requirements of the Contract Documents and the existing conditions shall be referred to the Owner's Representative for a determination in writing before the Private Entity performs any work affected by these discrepancies.

7.2. DRAWINGS AND SPECIFICATIONS REQUIREMENTS.

The following requirements apply to Private Entity's responsibility regarding the Plans and Specifications:

- a. Testing to establish compliance with the Contract Documents for critical items or critical portions of the work shall be the Private Entity's responsibility. Testing shall be consistent with that required under standard commercial practices. Any testing requirements specified do not limit the Owner from having additional testing and inspection performed in Owner's discretion at Owner's expense.
- b. The specifications require the Private Entity to make field tests of heating and air conditioning systems to demonstrate that the equipment will perform as required. The results of the tests are to be submitted before the final inspection. Manufacturer's representatives may be required for inspection, start-up, and instructions in the operation and maintenance of equipment and the Private Entity shall ensure their presence for such purposes if requested by the Owner.
- c. Any discrepancies in figures, drawings, specifications, or submittals shall be promptly resolved by the Private Entity through the Owner's Representative. Copies of all "Requests for Information" (RFI) or other correspondence, including confirmations of verbal instructions between the A-E and the Prime Construction Contractor or the Private Entity required to resolve deficiencies, shall be furnished in writing to the Owner's Representative.

7.3. SHOP DRAWINGS, SUBMITTALS, COORDINATION DRAWINGS, AND SCHEDULES.

- a. The Private Entity shall submit to the Owner's Representative, in triplicate, a schedule listing all items that will be furnished for review and approval no later than thirty (30) days after execution of this Agreement. For example, the schedule must include shop drawings and manufacturer's literature, test procedures, test results, certificates of compliance, material samples, and special guarantees, etc. The schedule must indicate the type of item, contract requirement reference, the Private Entity's scheduled date for submitting the above items, identification of the first scheduled activity and projected needs for approval answers to support procurement or installation. In preparing the schedule, reasonable time will be allowed for review, approval, and possible re-submittal. Also, the scheduling shall be coordinated with the approved construction progress chart. The Private Entity must revise and/or update the schedule as the Owner's Representative reasonably directs. Such revised schedule must be made available to the Owner's Representative for monitoring.
- b. The Private Entity shall submit to the Owner's Representative shop drawings, coordination drawings, and schedules for approval as required by the specifications or requested by the Contract Documents.
- c. Before submitting shop drawings on the mechanical and electrical work, the Private Entity shall obtain the Owner's Representative's written approval of lists of mechanical and electrical equipment and materials as required by the specifications.
- d. The Private Entity must check the drawings and schedules and coordinate them (by means of coordination drawings whenever required) with the work of all trades involved before submission, indicating approval on them. Drawings and schedules submitted without evidence of subcontractors/trades' approval may be returned for resubmission.
- e. Each shop drawing or coordination drawing must have a blank area 5 x 5 inches, located adjacent to the title block. The title block must display:
 1. Number and title of drawing;
 2. Date of drawing or revision;
 3. Name of Project building or facility;
 4. Name of Private Entity and, if appropriate, of Subcontractor submitting drawing;
 5. Clear identity of contents and location on the work; and
 6. Project title and contract number.
 7. Provide a unique 9 digit alphanumeric transmittal number containing the specification number (5 digits), sequence number (3 digits), and iteration letter (1 digit) clearly identifying the stage of the submittal process.
- f. Unless otherwise provided in this Agreement, or unless a shorter period is allowed or directed by the Owner's Representative, shop drawings, coordination drawings, and schedules must be submitted by Private Entity sufficiently in advance of construction requirements to permit twenty (20) calendar days, excluding delivery time to and from the contractor, for checking and appropriate action by the A-E. Such items shall be submitted to the Owner's Representative (2 copies) for review concurrently with the A-E's review.
- g. Except as otherwise provided in subparagraph h. below, approval of drawings and schedules will be general and may not be construed as:
 1. Permitting any departure from the requirements of the Contract Documents; or
 2. Relieving the Private Entity of responsibility for any errors, including details, dimensions, and materials.
- h. If drawings or schedules show variations from the requirements of the Contract Documents because of standard shop practice or for other reasons, the Private Entity must clearly describe the variation in the letter of transmittal. If acceptable, the Owner's Representative may approve any or all variations and issue an appropriate Change Order. If the Private Entity fails to describe these variations, it is not relieved of the responsibility for executing the work in accordance with the Contract Documents, even though the drawings or schedules have been previously approved. Otherwise, items approved by Owner or Owner's Representative shall not be subject to subsequent review.
- i. The Private Entity shall prepare and submit equipment room layout drawings and drawings of areas where the equipment proposed for use could present interface or space difficulties. Room layout drawings must conform to the requirements established for drawings. Layouts must be submitted within forty (40) calendar days after completion of final construction drawings. Submittals describing the various mechanical and electrical equipment items which are

to be installed in the areas represented by the layout drawings must be assembled and submitted concurrently and accompanied by the room layout drawings. Room layout drawings must show all pertinent structural and fenestration features and other items such as cabinets required for installation and which will affect the available space. All mechanical and electrical equipment and accessories must be shown in scale in plan and also in elevation and/or section in their installed locations. Duct work and piping also must be shown.

- j. All shop drawings, ductwork drawings, and sprinkler drawings must be on 30" by 42" sheets to fit the size of the Project drawings.
- k. At the completion of the Project, updated ductwork drawings and sprinkler drawings must be submitted as part of the "As-Built" drawings submission.
- l. All certificates required for demonstrating proof of compliance of materials with specification requirements, including mill certificates, statements of application, and extended warranties, must be executed in quadruplicate and furnished to the Owner's Representative. It is the Private Entity's responsibility to review all certificates to ensure compliance with the requirements of the Contract Documents and that all affidavits are properly executed prior to submission to the Owner's Representative. Each certificate must be signed by an official authorized to certify on behalf of the manufacturing company. Each certificate must contain the name and address of the manufacturer, the Project name and location, and the quantity and date(s) of shipment or delivery to which the certificate(s) apply. Copies of laboratory test reports submitted with certificates must contain the name and address of the testing laboratory and the date(s) of the tests to which the report applies. Certification shall not be construed as relieving the Private Entity from furnishing satisfactory material, if, after test(s) are performed on selected sample(s), the material is found not to meet the specified requirements.
- m. The A-E shall review and approve all shop drawings and other items. All approvals must be in accordance with the terms of the Contract Documents. Processing will be accomplished in accordance with the following procedure:
 - 1. The Prime Construction Contractor shall transmit reproducible copies of shop drawings etc. to the A-E for review. Information copies of the letter of transmittal, clearly identifying shop drawings, etc., shall at the same time be furnished to the Owner's Representative.
 - 2. As a result of the A-E's review, each submittal will be marked by the A-E as specified, or if not specified as follows:
 - "A-Action": The fabrication, manufacture and/or construction may proceed providing the work is in compliance with the Contract Documents.
 - "B-Action": The fabrication, manufacture and/or construction may proceed providing the work is in compliance with the A-E's notations and the Contract Documents.
 - "C-Action": No work shall be fabricated, manufactured or constructed and a new submittal is required. No submittal marked "C-Action" shall be permitted on site.
 - (a) The Private Entity is responsible for obtaining prints of all "A-Action" and "B-Action" reproducible shop drawings and distributing them to the field and to the subcontractors. Concurrently, two (2) copies of each print shall be provided to the Owner's Representative.
 - (b) The Private Entity is responsible for obtaining copies of all "A-Action" and "B-Action" manufacturer's descriptive literature, literature, catalog cuts and brochures and distributing them to the Prime Construction Contractor. Concurrently, two (2) copies of each shall be provided to the Owner's Representative.
 - (c) The Private Entity is responsible for submitting new shop drawings, brochures and/or samples to replace all "C-Action" items and furnishing two (2) copies to the Owner's Representative.
- 3. The Private Entity is responsible for maintaining the Shop Drawing Log. An updated copy of the Log shall be furnished to the Owner's Representative no less than monthly.

7.4. RECORD "AS BUILT" DRAWINGS.

- a. The Private Entity shall, during the progress of the work, keep a master set of prints on the job site (Record or also referred to as "As-Built" drawings) on which is kept a complete, careful and neat record of all deviations from the Construction Documents made during the course of the work.
- b. The Private Entity shall provide the Owner with one, complete, reproducible set of the Construction Documents incorporating the revisions and changes made during construction up to acceptance of the Project. These updated plans and specifications shall reflect all changes to the Construction Documents to indicate the "As-Built" conditions, including revisions in site and building area tabulations. These drawings and specifications must be certified as to their correctness by the signature of the Private Entity and A-E and used in preparing a permanent set of "As-Built" drawings.
- c. The Owner reserves the right to review "As-Built" documents at any time during the Project.
- d. The Private Entity shall forward all "As-Built" drawings, specifications and photographs to the Owner's Representative not later than thirty (30) calendar days after Project completion.
- e. Any part of the costs associated with the preparation and completion of the "As-Built" drawings will not be paid to Private Entity by Owner until the As-Built drawings are provided to and approved by the Owner's Representative.

7.5. SPARE PARTS DATA.

- a. The Private Entity shall furnish spare-parts data for each different item of equipment furnished. The data must include a complete list of parts and supplies, with current unit prices and sources of supply; a list of parts and supplies that are either normally furnished at no extra cost with the purchase of the equipment, or specified to be furnished as part of the Contract Documents, and a list of additional items recommended by the manufacturer to ensure efficient operation for a period of 360 days at the particular installation.
- b. The foregoing does not relieve the Private Entity of any responsibilities under any of the guarantees specified and/or provided.

ARTICLE VIII

Warranty

8.1. WARRANTIES.

The Private Entity warrants that all the work furnished as part of the Services is in accordance with the requirements of the Contract Documents, free from any defect or inferior materials or equipment outside of any acceptable tolerances, and is of such quality workmanship as to meet the standard of care generally accepted in the industry in Virginia for the type of work performed, for a period of one year after the date of Final Completion of all of the work as defined by Exhibit G, and, unless otherwise agreed by the Owner in writing, in Owner's sole discretion, all materials and equipment are new. All warranties provided or assigned by Private Entity shall be cumulative, so as to maximize Owner's warranty protection.

8.2. REPAIRS.

If, within the applicable warranty period, the Owner or Owner's Representative finds that warranted work needs to be repaired or changed because the materials, equipment, or workmanship failed to satisfy the warranty requirements of the Contract Documents, the Owner shall notify the Private Entity, which shall promptly, and without additional expense to the Owner:

- a. Place in a condition consistent with the warranties and satisfactory to the Owner all of the warranted work;
- b. Correct all damage to equipment, the site, the building, or its contents that is the result of such warranty failure; and
- c. Correct any work, materials, or equipment disturbed in fulfilling the warranty in a manner reasonably satisfactory to the Owner; and
- d. Should the Private Entity fail to proceed promptly in accordance with the warranty, the Owner, after seven (7) days advance notice to the Private Entity with opportunity to cure, may have the work performed by others at the Private Entity's expense and Private Entity agrees to promptly pay the Owner for all such costs, including reasonable attorney's fees.

8.3 TRANSFER OF WARRANTIES.

The Private Entity shall obtain each transferable guarantee or warranty of equipment, materials, or installation that is furnished by any manufacturer or installer in the ordinary course of the business or trade. The Private Entity shall obtain and furnish to the Owner all information required to make any such guarantee or warranty legally binding and effective, and shall submit both the information and the guarantee or warranty to the Owner in sufficient time to permit the Owner to meet any time limit requirements specified in the guarantee or warranty or, if no time limit is specified, before completion and acceptance of all work under this Agreement.

8.4 NON-WAIVER.

Owner, by accepting any warranties or guarantees under this Agreement, does not waive any legal right or remedy that Owner otherwise may have for breach of this Agreement and/or for breach of any such warranties or guarantees.

ARTICLE IX

INSURANCE, BONDS AND RISK

9.1 BONDS.

Private Entity shall provide payment and performance bonds, or letters of credit, for 100% of the construction value of the Project. The bonds shall be provided when and to the extent the Private Entity has been given a notice to proceed with construction at the site. The bonds, or letter of credit, shall make the Owner obligee and shall be in a form acceptable to Owner. The sureties providing the bonds shall be rated A+ or AVIII or higher, approved by the Owner's Representative in writing, and authorized to do business in the Commonwealth of Virginia.

9.2 INSURANCE.

- a. During the term of this Agreement, the Private Entity and its subcontractors must maintain the insurance required by this Section 9.2. Insurance companies providing such insurance shall be licensed in Virginia and shall be rated at least A (financial strength) and IX (size) by A.M. Best. Policies shall include all terms and provisions normally included in a policy of the type specified. The Owner, its officers, employees, agents and representatives shall be included as an additional insured on the liability policies, not including professional liability for the A-E.
- b. The Private Entity and its subcontractors must maintain and furnish evidence of workers' compensation, employers' liability insurance, and the following general public liability and automobile liability insurance:

COMMERCIAL GENERAL LIABILITY: Combined single limit per occurrence of \$7,000,000.

AUTOMOBILE LIABILITY: Combined single limit per occurrence of \$7, 000,000.

The above amounts can be provided through an umbrella policy if approved by the Owner.
- c. Each policy must include substantially the following provision:

"It is a condition of this policy that the company furnishes written notice to the Owner thirty (30) days in advance of the effective date of any reduction in or cancellation of this policy."
- d. The Private Entity and its subcontractors must furnish a certificate of insurance or, if required by the Owner's Representative, true copies of liability policies and manually countersigned endorsements of any changes. Insurance must be effective, and evidence of acceptable insurance furnished by Private Entity to Owner, before beginning performance under this Agreement. Evidence of renewal must be furnished not later than five days before a policy expires.
- e. The maintenance of insurance coverage as required by this Section 9.2 is a continuing obligation, and the lapse or termination of insurance coverage without replacement coverage being obtained will be grounds for termination for default.
- f. The Owner shall carry builder's risk insurance coverage for 100% of the constructed value and shall have Private Entity named as an additional insured. The Builder's Risk coverage shall include property in transit, on or off-premises that will become part of the Project. The Builder's Risk coverage shall include any pre-existing portion of any building damaged as a result of the Project. Owner shall procure and maintain a builder's risk insurance policy on an "all risk", 100% replacement cost basis, until completion and acceptance of the Project. Cessation of the Builder's Risk coverage shall be affirmatively coordinated by Owner with Private Entity.
- g. Private Entity shall be responsible for filing and settling of all claims and liaison with insurance adjusters.
- h. Neither the Private Entity nor any subcontractor shall commence work under this Agreement until the Private Entity has obtained and provided proof of the required insurance under this section to the Owner. The Private Entity confirms that all subcontractors have provided the Private Entity with proof of insurance. Private Entity further warrants that proof of coverage as provided to the Owner responds on a primary basis in the event of an uninsured or underinsured subcontractor. All such insurance shall be primary and non-contributory to any insurance or self-insurance the Owner may have in force.
- i. The required certificates of insurance shall name the Western Virginia Regional Jail Authority, its officers, agents, volunteers, and employees as additional insureds except with regard to the workers' compensation and employers' liability coverages. All coverages shall contain a waiver of subrogation in favor of the Owner. Additional insured and waiver endorsements shall be received by Roanoke Risk Management from the insurer within thirty (30) calendar days of the beginning of this Agreement. Certificate must also state that the aggregate limit applies on a per project basis.
- j. Property Coverage – Installation Floater (and Rigger's Form, if applicable) will be required for the installation of contents or equipment, coverage will begin with supplier and continue until equipment/contents has been fully installed. Floater will be valued for the replacement cost value of equipment/contents

including all costs. The Private Entity shall provide coverage for portions of the work stored off-site after written approval of the Owner at the value established in the approval and for portions of the work in transit.

- k. Special Hazards – If required by the Contract Documents, the Private Entity shall obtain and maintain during the life of the Agreement a rider to the policy or policies required. Should any unexpected special hazards be encountered during the performance of this Agreement, the Private Entity shall, prior to performing any work involving the special hazard, immediately obtain this insurance as instructed by the Owner. In the event the special hazard requiring the additional coverage was not a part of the Contract Documents, the expense of such insurance shall be reimbursed to the Private Entity by the Owner pursuant to a Change Order in accordance with Article XVII, otherwise the Private Entity shall assume full responsibility for the purchase with no charge back to the Owner.
- l. Limit of Liability - Nothing contained in these insurance requirements is to be construed as limiting the liability of Private Entity or Private Entity's insurance carriers. Owner does not in any way represent that the coverages or the limits of insurance specified is sufficient or adequate to protect Private Entity's interests or liabilities, but are merely minimums. The obligation of the Private Entity to purchase insurance herein shall not in any way limit the obligation of the Private Entity in any event and/or in the event that the Owner should suffer an injury or loss in excess of the amount recoverable through insurance.

9.3 Not used

9.4 INDEMNIFICATION.

The Private Entity shall hold harmless, defend and indemnify the Owner and its officers, boards and board members, agents, representatives, and employees from all claims, losses, damage, actions, causes of action, expenses, and/or liability, including any related attorney fees, accountant fees, expert witness fees, consultant fees, court costs, per diem expenses, traveling and transportation expenses, or other such related costs resulting from, brought for, or on account of (i) any personal injury or property damage of any type claimed, including any alleged wrongful death claim, received or sustained by any person, persons or property growing out of, occurring, or attributable to any work performed under or related to this Agreement, to the extent resulting in whole or in part from any acts or omissions of the Private Entity, any Subcontractor, or any employee, agent, or representative of the Private Entity or any Subcontractor or anyone performing Work for the Project through them, (ii) any mechanics' or construction liens arising as a result of the Work, or (iii) any failure of the Project to comply with any applicable governmental laws, ordinances, rules and regulations, and/or arising in any way out of or resulting from this Agreement or any of the work provided thereunder; provided, however, that such obligation by Private Entity to indemnify and hold Owner harmless shall not apply to any claim, loss, damage, action, cause of action, expense or liability (including the fees and costs associated therewith) to the extent proximately caused by the negligence of Owner or any of its agents or employees.

9.5 BANKRUPTCY.

In the event the Private Entity enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Private Entity shall immediately notify Owner's Representative. The notification shall be sent to ensure its receipt within five (5) days of the initiation of the bankruptcy proceedings. The notification shall include the date on which the bankruptcy petition was filed, the court in which the petition was filed, and a list of Project contracts for which final payment has not yet been made. This obligation remains in effect until final payment under this Agreement. If a surety upon any bond furnished in connection with this Agreement or any insurance carrier providing coverage in connection with this Agreement becomes insolvent, the Private Entity shall promptly replace the bond or insurance policy with one which is equivalent and acceptable to Owner.

ARTICLE X

NOTICES TO PROCEED, COMMENCEMENT AND COMPLETION

10.1 NOTICE TO PROCEED.

Within 60 days of the Effective Date, the Owner shall issue to the Private Entity a Notice to Proceed with construction. The Private Entity shall:

- a. Commence work under this Agreement within ten (10) days after the date of the Notice to Proceed from the Owner's Representative,
- b. Prosecute the work diligently, and
- c. Substantially complete each phase of the construction work in accordance with Exhibit G, TIME BEING OF THE ESSENCE.

If the Owner approves a phased completion of the project, the Private Entity shall achieve Final Completion as soon as possible but not later than thirty (30) calendar days after Substantial Completion of each phase. At the time of receipt of the building permit and monthly thereafter, Private Entity shall consult with the Owner's Representative with regard to the likely Substantial Completion date of each phase and earlier occupancy dates so as to allow the Owner to plan its occupancy of the facility.

10.2 not used

10.3 NOTICE OF DELAY.

Immediately, and in no event no later than ten (10) days after first becoming aware of any difficulties that might cause any delay in Substantial Completion under this Agreement, the Private Entity shall notify the Owner's Representative in writing of them. The notification must identify the difficulties, the reasons for them, and the estimated period of delay anticipated. Failure to give such notice in strict compliance with this Section 10.3 will waive any right by Private Entity to make a claim based upon such delay. Such notice shall be a condition precedent to Private Entity's right to pursue any claim for an adjustment to payment or schedule based upon such delay.

10.4 LIQUIDATED DAMAGES FOR DELAY; EARLY COMPLETION BONUS.

- a. Owner and Private Entity recognize that time is of the essence in the completion of the Work and that Owner will suffer loss or damages if the Work is not completed within the period of time stipulated, plus any extensions thereof allowed in accordance with the Agreement. The parties also recognize the delays, expense, and difficulties involved in proving the actual loss or damages suffered by Owner if the Work is not completed on time. Accordingly, if such Work is not Substantially Complete within the period of time set forth in this Agreement, and if no extension of such time period has been granted by the Owner, the Private Entity agrees it shall owe to and pay to Owner as liquidated damages for loss of Owner's full use or occupancy of the Work, but not as a penalty, the sum of **Fifteen Thousand Dollars (\$15,000)** as liquidated damages for each and every consecutive calendar day of delay in Substantial Completion. Once the Work is Substantially Complete, the accrual of liquidated damages shall stop and the Private Entity shall have forty-five (45) calendar days in which to achieve Final Completion of the Work. If Final Completion of the work is not achieved by the 45th day after Substantial Completion, and if no extension of such time period has been granted by the Owner, then Private Entity shall owe to and pay to Owner as liquidated damages the sum of **Thirty**

Thousand Dollars (\$30,000) as liquidated damages for each consecutive calendar day during which full and satisfactory completion of the Work (Final Completion) is delayed.

b. Private Entity further agrees that any liquidated damages Owner assesses against Private Entity may also be withheld by Owner from any retainage or other sums Owner may otherwise owe to Private Entity. Private Entity hereby waives any defense as to the validity of any liquidated damages on the grounds such liquidated damages could be void as penalties or are not reasonably related to actual damages. The liquidated damages provided herein shall be in lieu of all liability for any extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion or Final Completion in a timely manner.

c. If Final Completion is achieved prior to the time set forth in this Agreement or any agreed-upon extension thereof, the Owner shall owe to and pay to the Private Entity the sum of **Fifteen Thousand Dollars (\$15,000)** as an early completion bonus for each and every consecutive calendar day of early completion. The maximum payment by Owner to the Private Entity for the early completion bonus shall not exceed **\$150,000**. Such payment will be included in the Final Payment by the Owner to the Private Entity.

10.5 SUSPENSIONS AND DELAYS.

a. If the performance of all or any part of the work of this Agreement is suspended, delayed, or interrupted solely by:

1. An order or act of the Owner's Representative in administering this Agreement; or
2. By a failure of the Owner's Representative to act within the time specified in this Agreement or within a reasonable time so as not to delay the work of the Private Entity;

then the Private Entity may request an equitable adjustment to the amount and/or time due under this Agreement due to any increased costs directly caused by the delay or interruption (including the direct costs incurred during any suspension or interruption), and in the schedule and any other contractual term or condition affected by such suspension, delay, or interruption. However, no adjustment may be made under this Section 10.5.a. for any delay or interruption of performance that has been delayed or interrupted in any way by the action, omission, fault or negligence of the Private Entity or those providing work through Private Entity.

b. A claim under this clause will not be allowed for any costs incurred before the Private Entity has notified the Owner's Representative in writing of the act or failure to act involved, or if Private Entity has failed to follow the procedures of Article XVII, Section 17.5 of this Agreement for such claim.

10.6 EXCUSABLE DELAYS.

Private Entity shall not be in default by reason of an excusable failure in performing this Agreement in accordance with its terms (including any failure by the Private Entity to make progress in the prosecution of the work that endangers performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Private Entity or those providing any services through Private Entity. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Owner, fires, severe floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe and extreme weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Private Entity or those providing any of the Services through Private Entity, including without limitation, the Prime Construction Contractor, and any subcontractor, who shall plan for all contingencies which can be reasonably anticipated, such as unfavorable weather. Contingencies which can be reasonably anticipated shall not be considered a basis for claiming an excusable delay. However, Private Entity must notify Owner's Representative in writing within 10 days of the Private Entity's knowledge of any such event and such notice is a condition precedent to any such claim. The Private Entity shall require its subcontractors to notify the Private Entity in writing within seven (7) days of any such events. Furthermore, Private Entity shall not be entitled to any additional compensation for such events, but only to a reasonable time extension. Owner's Representative may disallow such a claim for an excusable delay if such claim does not meet all the requirements of this Agreement.

10.7 CONSTRUCTION SCHEDULE/ PROGRESS CHART.

a. Within ten (10) working days after receiving Notice to Proceed for each phase, the Private Entity shall prepare and submit to the Owner's Representative a complete detailed Project Schedule in the form of a electronic file and six (6) copies of a practical progress chart. The schedule shall show the principal categories of work, corresponding with those used in the breakdown on which progress payments are based, the order in which the Private Entity proposes to carry on the work, the date on which it will start each category of work, and the contemplated dates for completion. The Project Schedule must be in suitable scale to indicate graphically the total percentage of work scheduled to be in place at any time. The Private Entity shall use a Critical Path Method (CPM) format. This schedule shall use the latest version of Primavera Scheduling software, with at least 200 activities including sitework, procurement, delivery, significant owner activities, and installation of construction materials and equipment. Activities shall be organized by work areas, work breakdown structure, and shall be cost loaded to facilitate approval of progress payments. No activity shall have a value exceeding \$40,000 dollars, or a duration longer than 10 working days, without prior approval of the Owner's Representative. A critical path shall be developed based on scheduling logic that identifies all successor and predecessor activities and float. Activities of like duration, programmed for different times of the year shall be modified to account for weather that can reasonably be expected by the Private Entity as indicated in Exhibit K. Activity constraints shall be avoided. Such software and schedule shall be compatible with the Owner's computer system and scheduling software.

At the end of each progress payment period, or at such reasonable intervals as directed by the Owner's Representative, the Private Entity shall:

1. Revise the Project Schedule to reflect any changes in the work, completion time, or both, as approved by the Owner's Representative;
2. Enter on the Project Schedule the total percentage of work actually in place; and
3. Submit three (3) copies of the adjusted Project Schedule, and a complete electronic update, to the Owner's Representative.

b. If at any time the work falls behind the Project Schedule after taking into consideration any excusable delays as defined above, Private Entity shall take such action as necessary to improve progress. The Owner's Representative may require the Private Entity to submit a revised Project Schedule demonstrating its proposed recovery plan to make up the lag in scheduled progress. The plan shall show how the Private Entity shall achieve recovery by increasing resources and/or work times, (if approved by Owner). If the Owner's Representative finds the proposed plan unreasonable the Private Entity may be required to submit a new plan. If the new plan submitted is not reasonable, after consultation with the Private Entity, the Owner's Representative may require the Private Entity to increase the work force, accelerate the planned construction volume, increase assigned construction equipment, or the number of work shifts, or take other appropriate action, all without increase to the GMP.

c. Failure of the Private Entity to materially comply with any of these requirements will be considered grounds for a determination by the Owner's Representative that the Private Entity is failing to prosecute the work with such diligence as will ensure its completion within the time specified.

10.8 EXCEPTION TO COMPLETION SCHEDULE AND LIQUIDATED DAMAGES.

In cases where the Owner's Representative determines in writing that sodding and/or planting and/or specified maintenance thereof is not feasible during the construction period, such work will be excepted from the completion schedule and the liquidated damages provision of Section 10.4. However, such work must be accomplished or completed during the first sodding and/or planting period or the specified maintenance period following the original completion date within the same number of days originally scheduled for such activity.

ARTICLE XI

PRIVATE ENTITY RESPONSIBILITIES

11.1 PERFORMANCE AND SUPERINTENDENCE OF WORK BY PRIVATE ENTITY.

- a. The Private Entity shall be responsible for providing all the services called for by this Agreement. b. The Private Entity must give personal superintendence to the work either in person or by having a foreman or superintendent on the Private Entity's payroll, approved by the Owner's Representative, with authority to act on behalf of the Private Entity, on the site at all times work is in progress.
 1. A minimum of one Private Entity's superintendent (on the Private Entity's payroll) must be provided on site to be responsible for coordinating, directing, inspecting, and expediting the work of the Prime Construction Contractor and its subcontractors.
 2. It is contemplated that all work will be performed during hours allowed by County ordinance. Work performed by the Private Entity at its own volition outside such normal working hours shall be at no additional expense to the Owner. The Private Entity's material and equipment deliveries must not interfere with the arrival or departure of Owner employees, staff and visitors to existing facilities.
- c. The Private Entity must refer requests received from occupants of buildings included in the work area to change the hours of work, including anticipated cost and schedule impact, to the Owner's Representative for resolution. Private Entity will comply with any reasonable resolutions achieved by the Owner's Representative.
- d. The Private Entity shall submit a daily construction report by 10:00 a.m. of the following working day on a form provided by the Owner's Representative. The report shall indicate the number of people by trade or craft, and the type and location of work. The report shall include subcontractors, safety and quality violations observed, corrective measures taken to correct the violations, and other information requested by the Owner's Representative. The Owner's Representative may modify the requirements of this report as the Project progresses.

11.2 MATERIALS AND WORKMANSHIP.

- a. Unless otherwise specifically provided, all equipment and materials incorporated in the work must be new, of good quality and in compliance with the Contract Documents. Unless otherwise specifically provided, reference to any equipment, material, or patented process by brand name, make, or catalog number establishes a standard of quality only. The Private Entity may substitute any equipment, material, or process that the Owner's Representative finds to be equal to that named, which finding shall be in writing and in his/her discretion.
- b. In the event of substitution in accordance with paragraph a above, the Private Entity shall furnish to the Owner's Representative for approval the manufacturer's name, the model number, and any other relevant information on the performance, capacity, nature, and rating of equipment or materials proposed for substitution. If requested by the Owner's Representative, samples must be submitted for approval at the Private Entity's expense, shipping charges prepaid. Materials or processes substituted without the Owner's Representative's approval may be rejected by Owner.
- c. The Private Entity shall obtain the Owner's Representative's written approval of the machinery and mechanical equipment incorporated into the work. The Private Entity shall submit samples of all materials and equipment as required by the specifications. Owner approval or rejection shall be based upon the Contract Documents.
- d. All work shall be performed in a skillful and workmanlike manner. The Owner's Representative may, in writing, require the Private Entity to remove from the work any employee of the Private Entity, or of any subcontractor, the Owner's Representative has reason to deem incompetent, careless, or otherwise objectionable. The Private Entity shall immediately remove from the work any employee so designated.

11.3 (NOT USED)

11.4 USE OF PREMISES .

- a. The Private Entity, the Prime Construction Contractor, and any subcontractors and their employees shall comply with the regulations governing access to, operation of, and conduct while on the site as shown in Exhibit A attached hereto and shall perform the work required under this Agreement so as not to unreasonably interfere with the conduct of Owner's business except as indicated in Exhibit B.
- b. As permitted by the site conditions, the Private Entity shall separate its personnel, the Prime Construction Contractor's personnel, and subcontractors' personnel from Owner visitors, employees, and Owner property not involved in the Project. The Private Entity shall cordon off the construction area using barricades or other means to achieve this separation.
- c. Any requests received by the Private Entity from occupants, or occupants in the area, to change the sequence of work shall be referred to the Owner's Representative.
- d. The Private Entity, any subcontractors, and their employees will not have access to any Owner facility outside the scope of this Agreement without permission of the Owner's Representative except as provided in Exhibit B.
- e. Where available, Private Entity may use utility services of the building only if the Owner's Representative determines sufficient capacity is available to support the work and confirms such determination in writing. Private Entity, Prime Construction Contractor, or subcontractor employees may not use the toilet facilities. No cleaning of tools, including painting equipment/brushes, is permitted in the toilet or janitorial facilities.
- f. Private Entity shall provide a Site Utilization Plan for Owner review within 10 days of construction Notice to Proceed. Such plan should show access points, phasing, laydown areas, fenced and protected areas, and mobile office locations at a minimum.

11.5 PERMITS AND RESPONSIBILITIES.

- a. The Private Entity is responsible for obtaining any necessary licenses and permits at Private Entity's expense, and for complying with the codes and standards in connection with the prosecution of the work. The Private Entity is responsible for all injury to persons or damage to property that occurs as a result of its actions. The Private Entity must take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Private Entity is responsible also for all materials delivered and work performed until completion and acceptance by Owner of the entire construction work.

- b. The Private Entity shall demonstrate compliance with all environmental permits, assessment, or impact statement requirements and regulations identified in the Contract Documents and/or as may be required by law prior to, and during construction.

11.6 BUILDING CODES, FEES, AND CHARGES.

- a. The Private Entity shall comply with all state and local building code requirements.
- b. The Private Entity shall pay all fees and charges for connections to outside services and for use of property outside the site.

11.7 FEDERAL, STATE, AND LOCAL TAXES.

- a. The GMP includes all applicable federal, state, and local taxes and duties.

11.8 IDENTIFICATION OF CONTRACT DELIVERABLES.

Unless otherwise specified, the cover page of each document prepared and submitted by the Private Entity to the Owner under this Agreement shall include the following information:

- a. Name and business address of the Private Entity.
- b. Contract number.
- c. Name, position, and office location of the Owner's Representative's.
- d. Date of document.

11.9 PATENT AND COPYRIGHT INDEMNITY.

- a. Except as provided in paragraph d below, the Private Entity shall indemnify, defend and hold harmless the Owner, its employees, officers, Council, Council members, representatives and its agents against any liability, including other such costs and fees as further set out in Section 9.4 above, from any claim of patent and/or copyright infringement (or unauthorized use) arising in any way from any of the Services provided by or through Private Entity for the Project.
- b. The Owner shall promptly notify the Private Entity of any claim or suit subject to paragraph a above.
- c. This indemnification does not apply to claims of infringement of a patent and/or copyright resulting from the Owner's negligence or specific written direction, compliance with which requires the infringement.
- d. This clause must be included in all subcontracts under this Agreement, at any tier.

11.10 NON-DISCLOSURE.

The Private Entity shall not disclose any information received from the Owner that is marked confidential unless such disclosure is required by law, approved by the Owner or becomes available to Private Entity from a third party through proper means or readily available to the general public, such approval not to be unreasonably withheld or delayed.

11.11 DEBRIS AND CLEANUP.

- a. On a daily basis during the progress of the work, the Private Entity must remove and dispose of the resultant debris and keep the site neat and clean.
- b. The Private Entity shall, upon completion of each phase of the work, remove all construction equipment and surplus materials (except materials or equipment that are to remain on Owner property as provided by this Agreement), and leave the site in a clean, neat, and orderly condition satisfactory to the Owner's Representative.

11.12 HEAT.

Unless otherwise specified, or unless directed otherwise by the Owner's Representative in writing, the Private Entity shall provide heat as necessary to protect all work, materials, and equipment against injury from dampness and cold, and in the case of information technology equipment requiring the same, air conditioning, to protect it from heat and humidity. Private Entity will bear the cost of temporary enclosures, heat and electricity during construction of the Project to maintain the Project schedule.

11.13 ENGLISH LANGUAGE REQUIREMENT OF ON-SITE SUPERINTENDENT.

The Private Entity's on-site superintendent must be able to speak, read, and write English to the extent necessary to permit reasonable communication with Owner personnel.

11.14 SUBSTITUTE MATERIALS OR METHODS.

Where the technical provisions permit the Private Entity to propose substitute materials, items, systems, or equipment, the selection of such options is subject to the following conditions:

- a. Once a substitute has been selected and approved by the Owner's Representative, it must be used for the entire Project unless the Private Entity has proposed, and Owner's Representative has approved, the substitute for a limited application
- b. The Private Entity must coordinate its selection with the drawings and specifications and the A-E.
- c. Substitutions proposed by Private Entity shall be at no increase to the GMP.

11.15 ADVERTISING OF AWARDS.

Except with the Owner's Representative's prior written approval, the Private Entity agrees not to refer in its commercial advertising to imply in any manner that the Owner endorses its products.

11.16 GROUND BREAKING AND RIBBON CUTTING CEREMONIES.

Private Entity agrees to participate in groundbreaking and ribbon cutting ceremonies at a time specified by the Owner.

ARTICLE XII

OWNER RIGHTS AND RESPONSIBILITIES

12.1 OWNER'S REPRESENTATIVE.

The Owner has retained Construction Dynamics Group, Inc., an ARCADIS Company, as the Owner's Representative. The name, address, telephone number, and specific responsibilities, authority, and limitations of the Owner's Representative will be provided to the Private Entity in writing. The Owner's Representative may, in Owner's sole discretion, be removed or replaced by Owner at any time without prior notice to the Private Entity, but notification of the change, including the name and address of any successor Owner's Representative, will be provided promptly to the Private Entity by the Owner, in writing.

12.2 SITE VISITS.

- a. The Owner from time to time during construction may desire to conduct groups of guests on visits to the site of the work. These tours will be authorized by the Owner's Representative or his/her appointed representative. In such event the Private Entity shall cooperate by providing access to and posting signs to give notice of dangerous areas, providing hard hats, and making such other arrangements for the safety and convenience of the guests as may be required. The Owner's Representative shall give the Private Entity as much advance notice of any such visits as is practical and to the maximum practicable extent shall schedule any such visits so as not to interfere with the progress of the work.

12.3 OWNER-DIRECTED STAFFING CHANGES.

- a. Should the Owner's Representative reasonably deem it to be in the best interests of the Owner to require the removal of any person working on or under this Agreement, that person must be immediately removed from the work.
- b. "Person," as used in this clause, includes any persons providing work through the Private Entity.

12.4 EXAMINATION OF RECORDS.

- a. The Owner and its authorized representatives shall, during the Project and until five (5) years after final payment under this Agreement, have access to and the right to audit, copy and/or other records of the Private Entity involving any transactions or items related to this Agreement.
- b. For the purposes of this Section 12.4, the Private Entity agrees to provide Owner, at no cost to the Owner, adequate and appropriate work space at the Private Entity's facilities in order to conduct such examinations.

12.5 OWNERSHIP OF WORK PRODUCT.

- a. Work Product: All drawings, specifications and other documents and electronic data furnished by the Private Entity to the Owner under this Agreement and the copyrights thereto ("Work Product") shall become the property of the Owner upon payment for such item.
- b. Owner may use the Work Product in connection with Owner's occupancy and use of the Project, including for maintenance and repairs, future renovations, and expansions, and for any other purpose related to the Project as Owner deems appropriate.

12.6 SURVEY MONUMENTS AND BENCHMARKS.

- a. The Private Entity will establish such general reference points, for written approval by the Owner's Representative, as will enable the Private Entity to proceed with the work. The Private Entity shall provide new monuments where shown or specified. If the Private Entity finds that any previously established reference points have been destroyed or displaced, or that none have been established, the Private Entity shall promptly notify the Owner's Representative.
- b. The Private Entity must protect and preserve established benchmarks and monuments and make no changes in locations without the written approval of the Owner's Representative. Established reference points that may be lost, covered, destroyed, or disturbed in the course of performance of the work under this Agreement, or that require shifting because of necessary changes in grades or locations, must (subject to prior approval of the Owner's Representative) be replaced and accurately located or relocated (as appropriate) by a licensed engineer or licensed land surveyor.
- c. New monuments will be six (6) inches square by three (3) feet deep (unless otherwise specified), of concrete or stone, with a 3-inch copper or brass pin, 3/8-inch in diameter, in the center, and must be set flush with the ground or pavement in locations indicated on the site plan.
- d. Monuments will not be required where lines of buildings are coincident with property lines.
- e. The Private Entity shall verify the figures shown on the survey and site plan before undertaking any construction work and will be responsible for the accuracy of the finished work.
- f. After completion of construction and before final payment, the Private Entity must furnish the Owner blueprints (in triplicate) of plans showing the exact location of construction survey monuments with reference to true property lines.

12.7 OWNER PARTIAL OCCUPANCY.

- a. The Owner's Representative reserves the right of partial occupancy or use of facilities, services, and utilities, before final acceptance, without implying completion or acceptance of any part of the Project by the Owner. Before such occupancy or use, the Owner's Representative must furnish the Private Entity an itemized list of work remaining to be performed or corrected. Failure to list an item will not relieve the Private Entity of the responsibility for complying with the terms of the Contract Documents. Responsibility for damage to the work within the partially occupied area shall be transferred to the Owner for any such partial occupancy or use.
- b. Costs incurred and delays to the completion of the Project as a result of such partial occupancy or use of facilities, services, and utilities are subject to equitable adjustment pursuant to a Change Order under Article XVII, Section 17.1.

12.8 OWNER PROPERTY.

- a. The Owner will deliver or make available to the Private Entity, at the time and locations stated in the Contract Documents, the Owner property described in the specifications. If that property, suitable for its intended use, is not delivered or made available in a timely manner to the Private Entity, the Owner's Representative may make an equitable adjustment pursuant to a Change Order in accordance with Article XVII, Section 17.1 if:
 1. The Private Entity submits a timely written request for an equitable adjustment; and
 2. The facts warrant an equitable adjustment.
- b. Title to Owner property remains in the Owner even if incorporated in or affixed to property not owned by the Owner. The Private Entity may use the Owner property only in connection with this Agreement. The Private Entity must maintain adequate property control records in a form acceptable to the Owner's Representative and must make them available for Owner inspection upon request.

- c. Upon delivery of Owner property to the Private Entity, the Private Entity assumes the risk and responsibility for its loss or damage, except:
 - 1. For reasonable wear and tear;
 - 2. To the extent property is consumed in performing the Agreement; or
 - 3. As otherwise provided in the Contract Documents.
- d. Changes in Owner-Furnished Property
 - 1. By written notice, the Owner's Representative may; (a) decrease the property provided or to be provided by the Owner under this Agreement; or (b) substitute other Owner owned property for the property to be provided by the Owner, or to be acquired by the Private Entity for the Owner under this Agreement. The Private Entity must promptly take any action the Owner's Representative may direct regarding the removal and shipping of the property covered by this notice.
 - 2. In the event of any decrease in or substitution of property pursuant to subparagraph d.1 above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Owner had agreed in this Agreement to make available, the Owner's Representative, upon the Private Entity's written request, or if substitution causes a decrease in the cost of performance, on the Owner's Representative's own initiative, may equitably adjust any contractual provisions affected by the decrease, substitution, or withdrawal, in accordance with the "Changes" clause.
- e. The Private Entity must maintain and administer a program or system acceptable to the Owner's Representative for the utilization, maintenance, repair, protection, and preservation of Owner property until it is disposed of in accordance with this Section 12.8.
- f. The Owner, and any persons designated by it, shall at reasonable times have access to premises where any Owner property is located for the purpose of inspecting it.
- g. Within forty five (45) calendar days after Notice to Proceed with construction, the Private Entity must submit a schedule to the Owner's Representative, in an acceptable format and giving desired dates for delivery of items and property furnished by the Owner. Approved dates of delivery must be confirmed by the Owner's Representative in writing. Approved dates of delivery must be confirmed by the Private Entity thirty (30) calendar days prior to scheduled delivery. The Private Entity must submit a written report to the Owner's Representative within forty eight (48) hours after receipt, noting any shortages or damage to the Owner-furnished property.
- h. If Owner-furnished equipment is to be installed and is not on the construction site, the Owner will make separate arrangements to provide delivery to the site. Any costs to Private Entity for labor associated with loading or unloading this Owner-furnished equipment will be negotiated and reflected in a Change Order.
- i. Upon completing this Agreement, the Private Entity shall follow the Owner's Representative's instructions regarding the disposition of all Owner property not consumed in performing this Agreement or previously returned to the Owner. The Private Entity shall prepare for shipment, deliver f.o.b. origin, or dispose of the Owner property, as directed or authorized by the Owner's Representative. The net proceeds of any such disposal will be credited to award amounts due Private Entity or will be paid to the Owner as directed by the Owner's Representative.

12.9 OTHER CONTRACTS.

The Owner may award other contracts for additional work, and the Private Entity must cooperate and coordinate with the other contractors and Owner employees. The Private Entity must not unnecessarily commit or permit any act that will interfere with the performance of work by any other contractor or by Owner employees. Should contractors or Owner employees delay the Private Entity, cause any damage to Private Entity's work or otherwise cause an increase in the Private Entity's cost or time of performance, the contract sum and contract time may be equitably adjusted through a Change Order in accordance with the provisions of this Agreement.

ARTICLE XIII

ADMINISTRATIVE ITEMS

13.1. STANDARD REFERENCES.

All publications and other documents (such as manuals, handbooks, codes, standards, and specifications) referred to in this Agreement for the purpose of establishing requirements applicable to equipment, materials, or workmanship are hereby incorporated by reference in this Agreement.

ARTICLE XIV

SUBCONTRACTING

14.1 SUBCONTRACTS

- a. Nothing in this Agreement may be construed to create any contractual relationship between any subcontractors and the Owner, except the Owner is a third party beneficiary of such contracts as previously noted. The divisions or sections of the specifications are not intended to control the Private Entity in dividing the work among subcontractors or to limit the work performed by any trade.
- b. The Private Entity is responsible to the Owner for acts and omissions of its own employees, of subcontractors and their employees, and any other person providing work on the Project through Private Entity. The Private Entity is also responsible for the coordination of the work of the trades of subcontractors.
- c. The Owner will not undertake to settle any differences among the Private Entity, the Prime Construction Contractor, and any subcontractors or any of them.

ARTICLE XV

PROTECTION OF PERSONS AND PROPERTY

15.1 ACCIDENT PREVENTION.

- a. All construction and other work on this Project must be performed in compliance with the Occupational Safety and Health Act of 1970 and with local, state and federal occupational safety and health regulations enforced by an agency of the locality or state under a plan approved by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA). Where requirements are different or in conflict, the more stringent requirement will apply.

- b. The Private Entity shall maintain an accurate record of exposure data and all accidents incidental to work performed under this Agreement resulting in death, traumatic injury, occupational disease, or damage to property, material, supplies, or equipment. The Private Entity must submit regular Project safety reports, exposure data, and accident reports, as prescribed by the Owner's Representative.
- c. Health and Safety Plans are required as follows:
 - 1. Prior to commencing on-site work, the Private Entity must submit to the Owner's Representative, in triplicate, a Health and Safety Plan for the Project site.
 - 2. The Health and Safety Plan must state that the Prime Construction Contractor and all subcontractors are required to comply with the Private Entity's Project safety rules and requirements issued under the authority of that program.
 - 3. The Health and Safety Plan must identify, by name, the Private Entity's representative responsible for the execution of the Project safety program. The Private Entity's Project safety representative must have the express written authority from the Private Entity to stop work, to abate hazardous conditions or unsafe practices, and to eject any Private Entity, Subcontractor, or vendor employees from the Project site for failure to comply with safety requirements.
 - 4. The Health and Safety Plan must include the precautionary measures to be taken to protect Owner staff and the public.
- d. The authority, responsibilities, and duties of the Private Entity's Project safety representative must be incorporated as part of the written Health & Safety Plan. The safety responsibilities include, but are not limited to, conducting subcontractor construction safety program reviews, conducting employee safety orientation training, conducting weekly safety meetings, conducting daily site safety inspections, auditing Subcontractor safety compliance, and preparing required periodic and special safety reports.
- e. In addition to the general requirements of Health and Safety Standards, the Private Entity, A-E and Prime Construction Contractor, specifically must comply with applicable OSHA requirements concerning Hazard Communications Standards. Details of the Private Entity's hazard communications program shall be included in the Health & Safety Plan.

15.2 HEALTH AND SAFETY STANDARDS.

- a. In performing this contract, the Private Entity must:
 - 1. Comply with applicable Occupational Safety and Health Standards promulgated pursuant to the authority of the Occupational Safety and Health Act of 1970 (OSHA).
 - 2. Comply with any other applicable federal, state, or local regulations governing workplace safety to the extent they do not conflict with a.1 above; however, the more stringent shall apply.
 - 3. Comply with any Owner standard unless the OSHA standard contains more rigorous or stringent safety requirements, in which case the OSHA standard governs and takes precedence.
 - 4. Take reasonable precautions to protect the safety and health of the Private Entity's employees, Owner staff, employees, and the public.
- b. The Private Entity must coordinate its use of existing Owner premises with the Owner's Representative. Subjects of this coordination include the designation of work and storage areas; the extent, if any, of use by the Private Entity of Owner tools and equipment; the furnishing by the Private Entity of appropriate signs and barricades to exclude unauthorized personnel from the work areas and to call attention to hazards and dangers; and other matters relating to the protection of Owner staff, employees, property and the public.
- c. Materials, supplies, articles, or equipment manufactured or furnished under this Agreement or order must conform to the Occupational Safety and Health Standards pursuant to the authority of OSHA, and to other safety and health requirements specified in this Agreement or order. When conducting work on existing facilities, the Private Entity must provide the Owner's Representative copies of Material Safety Data Sheets (MSDS) for any hazardous material, as defined by OSHA's Hazard Communications Standards, to be used on the job.
- d. If no OSHA standard exists, federal or other nationally recognized standards apply. Copies of current Occupational Safety and Health Standards are available from regional and/or area offices of the U.S. Department of Labor, Occupational Safety and Health Administration.

15.3 PROTECTION OF THE ENVIRONMENT, EXISTING VEGETATION, STRUCTURES, UTILITIES, AND IMPROVEMENTS.

- a. The Private Entity shall perform work reasonably necessary to implement and accomplish a program to prevent environmental pollution during or as a result of construction performed under this Agreement. As a minimum, the Private Entity's work must conform to all requirements of applicable federal, state and local law.
- b. The Private Entity must use reasonable efforts to preserve, protect and maintain all existing vegetation (such as trees, shrubs, and grass), landscape features, and structures on or adjacent to the site of work that are not to be removed. Care must be taken in removing trees authorized by the Owner's Representative for removal, to avoid damage to vegetation that will remain in place. Any trees or other landscape features scarred or damaged by the Private Entity's equipment or operations must be restored by the Private Entity. The Owner's Representative decides what method of restoration must be used and whether damaged trees and/or shrubs will be treated or replaced. The Private Entity shall use guard posts or barriers as necessary to control vehicular traffic passing close to trees and/or shrubs to remain. Areas disturbed, such as temporary roadways or embankments, must be restored to near natural conditions that will permit the growth of vegetation. Disturbed areas must be graded and filled as required, covered with six inches of topsoil and landscaped as per the Contract Documents.
- c. The Private Entity shall protect from damage all existing buildings, improvements or utilities at or near the site of the work, the location of which is known, and must repair or restore any damage to these facilities resulting from failure to comply with the requirements of this contract or to exercise reasonable care in performing the work. If the Private Entity fails or refuses to repair such damage promptly, the Owner's Representative, following seven (7) days notice to the Private Entity with opportunity to cure, may have the necessary work performed and charge the cost to the Private Entity, who shall pay such costs to the Owner in a prompt manner.
- d. The Private Entity shall obtain approval from the Owner's Representative for any temporary roads, embankments and disposal areas not included in Project specifications or drawings and restore such areas to original conditions, including appropriate landscaping, upon the completion of work.
- e. Monuments, markers and works of art must be protected. Items discovered that have potential historical or archeological interest must be preserved. The Private Entity must leave the archeological find undisturbed and must immediately report the find to the Owner's Representative so that the proper authority may be notified. The GMP and time may be equitably adjusted as a Change Order in accordance with the provisions of this Agreement if the Private Entity incurs additional cost or time to perform as a result of any such discovery.

- f. Private Entity shall follow all Environmental Protection Agency, Virginia Department of Environmental Quality and other applicable governmental regulations and guidelines, as to the labeling, use, storage and disposal of "hazardous waste", which shall for the purposes of this agreement be defined as (a) any chemical, substance, material, mixture, contaminant or pollutant, now or hereafter defined as a "hazardous substance" under the comprehensive Environmental Response, Compensation and Liability Act, as amended from time to time; (b) petroleum, crude oil, or any fraction thereof; (c) any pollutant, contaminant, special waste or toxic substance now or hereinafter listed, defined by or subject to regulation under any federal, state or local statute, ordinance, rule, regulation, standard, policy, guidance, permit, order, administrative or judicial decision or pronouncement, previously, currently or hereafter in effect, as amended from time to time, pertaining to health, safety, or the environment, including without limitation, natural resources, environmental regulation, contamination, pollution, cleanup, or disclosure. Private Entity agrees to indemnify, hold harmless and defend Owner and all Owner's successors, employees, officers, Council, Council members, representatives, and agents from any liability, claim, demand, action, cause of action, suit, loss, damage, injury, expense, cost, settlement, or judgment of any kind or nature including but not limited to demands, fines, remediations, or penalties asserted by any governmental entity, as a result of the treatment, storage, disposal, handling, spillage, leakage, or presence in any form in soils, surface waters, groundwaters, air, or property, of any wastes or "hazardous waste" as defined in this paragraph, at the subject property, caused or contributed to by Private Entity or Private Entity's subcontractors, except as such may have occurred at the direction of Owner or upon Owner's negligence.

15.4 ACCESS TO SITE.

- a. The Private Entity's access to the site and use of existing roads will be as agreed to by the Private Entity and the Owner's Representative including issuing vehicle passes for construction and private vehicles.
- b. Private Entity shall not permit workers to carry firearms or other deadly weapons onto any Owner construction site or into any facility, including in their personal or construction vehicles. This supersedes any state or local law permitting the carrying of firearms or weapons. Violation of this clause shall be grounds for removal of individuals or contractors from the site or termination for default.

15.5 HANDLING ASBESTOS AND OTHER HAZARDOUS MATERIALS.

The Private Entity shall be responsible for handling any known hazardous or contaminated materials existing on the site in a proper manner and by properly trained and licensed, if required, persons.

ARTICLE XVI

PAYMENTS

16.1 INVOICES (CONSTRUCTION).

- a. The Private Entity's invoices must be submitted before payment can be made.
- b. The Private Entity agrees that submission of an invoice to the Owner for payment is a certification that:
1. Any services being billed for have been performed in accordance with the requirements of the Contract Documents; and
 2. Any supplies for which the Owner is being billed have been delivered or suitably stored off site, with appropriate insurance coverage, and in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated in the Contract Documents. Private Entity shall provide, suitable to Owner's Representative approval, evidence of insurance for storage facility, a complete inventory of items, a written right of access to the items, and certification of title to the Owner.
- c. To ensure proper payment, Private Entity must furnish all documents required elsewhere in the Contract Documents and/or as reasonably required by the Owner's Representative.

16.2 PAYMENT.

- a. Reimbursable Costs for Construction:
- The Owner will make progress payments monthly within thirty (30) calendar days of receipt of the Private Entity's properly executed invoice or at more frequent intervals as determined by the Owner's Representative. Before the first progress payment becomes due, the Private Entity must prepare a schedule of values reasonably acceptable to the Owner's Representative. The values in the breakdown will be used for determining progress payments.
- b. If material delivered to the Project site that will be incorporated into the Project will be taken into consideration in computing progress payments, before each payment is made, the Private Entity must furnish the Owner's Representative proof of the quantity, value, and delivery of such material.
- c. In making progress payments, the Owner's Representative will retain five percent (5%) of the progress payments earned on the construction portion of the work until the work is fifty percent (50%) complete, after which time there shall be no additional retainage.
- d. All material and work covered by progress payments will be the sole property of the Owner. However, this paragraph does not:
1. Relieve the Private Entity of responsibility to protect and safeguard material and work for which payment has been made or for restoration of any damaged work; or
 2. Waive the right of the Owner to require fulfillment of all terms of the Contract Documents.
- e. Before receiving a progress payment or final payment under this Agreement, the Private Entity must certify to the Owner's Representative that payment due to the Prime Construction Contractor and subcontractors have been made from the proceeds of prior payments or will be made in a timely fashion from the payment then due the Private Entity. Private Entity agrees to comply with the provisions of Virginia Code Section 2.2-4354 regarding payments to others.
- f. Upon completion and acceptance of all work, the amount due the Private Entity under this Agreement shall be paid upon presentation of a properly executed invoice, after the Private Entity has furnished the Owner with a release of all claims against the Owner arising by virtue of this Agreement, other than claims in stated amounts that must be specifically excepted by the Private Entity from the operation of the release. If the final cost as audited by the Owner is less than the GMP, the final invoice shall include any share in savings (see Section 5.7). If the sum of all progress payments and the final invoice is greater than the GMP, the final invoice shall be adjusted so that the sum of all progress payments and the final payment is not greater than the GMP as adjusted by any changes pursuant to Article XVII. If the Private Entity's claim to amounts payable under the Agreement has been assigned, with consent of Owner, as provided in the Assignment of Claims clause, a release may also be required of the assignee.
- b. Payment of the Fixed Fees will be made in accordance the schedule contained in Exhibit D.

16.3 CONSTRUCTION COST BREAKDOWN.

The Private Entity's submission of its Guaranteed Maximum Price (GMP) must include a "schedule of values" type construction cost breakdown by CSI Division and other breakdowns as reasonably requested by Owner's Representative. The Private Entity shall provide copies of its contract with its Prime Construction Contractor and construction subcontracts and a comparison to the GMP, for approval by the Owner's Representative, and for use in verifying monthly construction invoices.

16.4 ALLOWABLE COST AND PAYMENT.

- a. **Invoicing:** The Owner will make payments to the Private Entity as set forth in section 16.2 (a), but not more than monthly, in amounts approved by the Owner's Representative, such approval not to be unreasonably withheld. The Private Entity must submit an invoice or voucher to the address specified by Owner, supported by a statement of claimed allowable costs of performing this Agreement, in such form and detail as the Owner's Representative may reasonably require.
- b. **Audit:** At any time or times before final payment, the Owner's Representative may have the Private Entity's invoices or vouchers and statements of cost audited. Any payment may be:
 1. Reduced by amounts found by the Owner's Representative not to be proper or supported by sufficient documents; or
 2. Adjusted for prior overpayments or underpayments.
- c. **Final Payment:**
 1. The Private Entity must submit a completion invoice or voucher, designated as such, promptly upon full and proper completion of the work by Private Entity, but not later than 30 days (or longer, as the Owner's Representative may approve in writing) from the completion date. Upon Owner's approval of that invoice or voucher, and upon the Private Entity's compliance with all terms of this Agreement, the Owner will promptly (within 30 days) pay any balance not previously paid (including all retainage).
 2. In exchange for final payment the Private Entity shall and does release the Owner and its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this Agreement, except for those that have been identified as open in the final invoice.

ARTICLE XVII

CHANGES/CLAIMS/DISPUTES

17.1 CHANGES.

- a. The Owner may at any time, without notice to any sureties, by written change specifically designated or indicated to be a Change Order or Change Directive, make a Change, including, without limitation, one that:
 1. Changes the plans and specifications (including drawings and designs);
 2. Changes the method or manner of performance of the work;
 3. Changes the Owner-furnished facilities, equipment, materials, services, or site; or
 4. Directs acceleration in the performance of the work.
- b. Any other written or oral order, direction, instruction, interpretation, or determination from the Owner that causes a change to the Scope of Work or its duration will only be treated as a Change Directive, allowing a change in compensation or schedule, only if (1) the Private Entity gives the Owner's Representative written notice as soon as practicable but not later than within ten (10) days, of the receipt by Private Entity, the Prime Construction Contractor, or any subcontractor, whichever has first receipt of such order, direction, instruction, or determination, stating (i) the date, circumstances, and source of the order, direction, instruction or determination, and (ii) that the Private Entity regards the order, direction, instruction or determination as a Change, and (2) Private Entity does not incur additional costs attributable to such order, direction, instruction or determination without first receiving a Change Directive from Owner unless waiting for a Change Directive is unreasonable under the circumstances. Such notice is a condition precedent to any such claim.
- c. Except as provided in this Section 17.1, no order, direction, instruction, interpretation, determination, statement, or conduct of the Owner's Representative may be treated as a Change or entitle the Private Entity to any adjustment in compensation or schedule (except for any Owner-caused delay).
- d. Only if any Change under this Article materially adds to or increases the Scope of Work and causes an increase or decrease in the Private Entity's cost of, or the time required for, the performance of any part of the work under this Agreement, the Owner shall issue a Change Order or Change Directive for such Change. However, no claim for any Change shall be allowed for which the Private Entity has not materially complied with the requirements of paragraph b as well as all other requirements of this Agreement. The GMP shall be decreased for any Owner requested reduction to the scope of work.
- e. No claim by the Private Entity will be allowed if asserted after final payment under this Agreement.
- f. After approval of final Plans and Specifications, except for the correction of errors and omissions, the Private Entity shall not make or allow any changes in the plans or specifications, including drawings and designs, without approval of the Owner's Representative.
- g. The GMP shall be adjusted for overruns and underruns in any allowances identified in Exhibit D. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner's Representative may direct or as required to perform the work, but the Private Entity shall not be required to employ persons or entities to whom the Private Entity has reasonable objection. Unless otherwise provided in this Agreement, (1) allowances shall cover the cost to the Private Entity of materials and equipment delivered at the site and all required taxes, less applicable trade discounts but no other costs; and (2) whenever costs covered by (1) are more or less than allowances, the GMP shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs covered by (1) and the allowances. Materials and equipment under an allowance shall be selected by the Owner's Representative in sufficient time to avoid delay in the work. Allowance overruns may be deducted from the Owner's portion of savings, if any, in the Private Entity's contingency, with the Private Entity's approval, such approval to be at the sole discretion of Private Entity.
- h. The Private Entity shall not proceed with any Change until the Owner has obtained all necessary approvals and any required appropriations of funds to pay for the Change.

17.2 CHANGE ORDER ACCOUNTING.

The Owner's Representative may require Change and Change-order accounting whenever the estimated cost of a Change or series of related Changes exceeds \$50,000. The Private Entity, for each Change or series of related Changes, must maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the Change. The Private Entity shall maintain such accounts until the parties agree to an equitable adjustment for the Changes ordered by the Owner's Representative or the matter is finally disposed of in accordance with Section 17.5. However, Private Entity shall continue to work on the Project without any interruption and/or delay.

17.3 EQUITABLE ADJUSTMENTS.

a. Reimbursable Costs and Fixed Fees For Construction:

1. There will be no monetary adjustment to the GMP under this Agreement except when the Scope of Work has been modified by the Owner by a Change and as allowable under the other provisions of this Agreement. All other changes required to complete the work shall be the sole responsibility of the Private Entity.
2. In the event of such a Change by Owner, an appropriate monetary adjustment to the GMP shall be made only if all the requirements of this Agreement are met. The Private Entity's written statement of the monetary extent of any claim for equitable adjustment under this Agreement must be submitted in the form of a lump sum proposal (unless otherwise requested) with an itemized breakdown of all increases or decreases in the cost of the Private Entity's and all subcontractors' work, in at least the following detail:
 - (a) Material quantities and unit cost
 - (b) Labor costs (identified with the specific item of material to be placed or operation to be performed)
 - (c) Construction equipment
 - (d) Worker's Compensation, Automobile and Public Liability Insurance
 - (e) Overhead
 - (f) Profit
 - (g) Employment taxes under FICA and FUTA
3. No percentages for overhead, profit or commission will be allowed on employment taxes under FICA and FUTA. The percentages for overhead, profit and commission will be negotiated and may vary according to the nature, extent, and complexity of the work involved. Not more than three percentages, not to exceed the maximum percentages shown below, will be allowed regardless of the number of tiers of subcontractors; that is, the markup on work subcontracted by a subcontractor will be limited to one overhead percentage (10% maximum) and one profit percentage (10% maximum) in addition to the Private Entity's commission percentage (5% maximum). On proposals covering both increases and decreases of the Scope of Work, the overhead and profit will be computed on the net change only.
4. The Private Entity must submit with its proposal its written request for time extension (if any) which must be based on a demonstrated impact to critical path activities.
5. In considering a modification to the GMP, the Owner may check estimates in detail, utilizing unit prices where specified or agreed upon, with a view to arriving at an equitable adjustment.
6. Payment for a Change involving construction work will be made on the basis of direct construction costs and subcontractor costs up to the limit of the revised GMP. Payment for Private Entity and Contractor services will be made on the basis of the negotiated fee.
7. After receipt of a proposal with a detailed breakdown, the Owner's Representative will act reasonably promptly thereon. However, when the necessity to proceed with a Change does not allow sufficient time to check a proposal, or in the event of a failure to reach an agreement on a revised GMP, the Private Entity, if directed by Owner, shall proceed with the work and will be reimbursed as provided for all direct costs. The GMP shall be subsequently modified based on the actual cost of the change, plus a fee increase for overhead and profit as provided in this Agreement.
8. Upon written request by the Owner's Representative, the Private Entity shall submit a proposal, in accordance with the requirements and limitations set forth in subparagraphs (a.1) through (a.8) of this section, for work involving contemplated changes covered by the request, within the time limit indicated in the request or any extension of such time limit as may be subsequently granted. If, within a reasonable time after receipt of such proposal, the Owner's Representative orders the Private Entity to proceed with the performance of the work proposed, the proposal submitted prior to the order will constitute the Private Entity's statement of the monetary extent of its claim for adjustment to the Guaranteed Maximum Price.

17.4 DIFFERING SITE CONDITIONS

Private Entity represents that it has had full opportunity to visually inspect the existing facility and/or the site to determine suitability for this Project. Private Entity therefore waives any claim to any adjustment in the GMP arising from visible physical conditions of the existing Project area and/or Project site and voluntarily assumes the risk of any increased costs associated with such conditions. Prior to issuance of a Notice to Proceed, Owner shall certify to the Private Entity in writing that all site work was performed properly and in accordance with industry standards and applicable laws and regulations.

17.5 RESOLUTION OF DISPUTES, CLAIMS AND OTHER MATTERS

Disputes, claims and other matters in question between the parties shall only be resolved as follows:

- a. The Private Entity shall give Owner's Representative written notice of any claim for any additional compensation, damages, or delay within ten (10) days of its awareness of the occurrence of the event leading to the claim being made and Private Entity shall submit the actual claim and any supporting data reasonably available within thirty (30) days after the occurrence giving rise to the claim ends unless otherwise agreed in writing by the parties. The "occurrence" means the condition encountered in the field giving rise to the claim and not a later dispute about payment for that condition. Claims of delay will be resolved as they occur, and no claims of cumulative impacts or deferral of claimed delay will be allowed. Complete satisfaction of this Section 17.5.a is a condition precedent for Private Entity to pursue a claim arising under or relating to this Agreement, and failure by Private Entity to satisfy this subparagraph a as to written notice or, unless otherwise agreed in writing by the parties, to submit its claim and reasonably available data in accordance with this Section 17.5.a will waive any claim by Private Entity. Unless otherwise agreed by the parties, the Owner shall act on any claims as set forth below.
- b. The parties shall first endeavor to resolve any disputes, claims or other matters in question between them through direct negotiations, and if such direct negotiations fail, by non-binding mediation, if agreed to by both parties, before a mediator agreed upon by the parties, with the site of the mediation being

Roanoke County, Virginia. Should the dispute, claim, or other matter in question remain unresolved for the shorter of (i) following negotiation, or (ii) more than ten (10) days after termination of mediation if mediation was undertaken, either party may proceed in accordance with Section 17.5.c below.

- c. If the procedures of Section 17.5.b have been followed, but, more than ten (10) days have passed since a party has invoked mediation, and the dispute, claim or matter in question remains unresolved, then either party may institute a lawsuit or chancery action, as appropriate, in the Circuit Court of Roanoke County, Virginia, or if the subject or amount in controversy is within its jurisdiction, the General District Court of Roanoke County, Virginia.
- d. Nothing in Sections 17.5.b shall prevent a party from seeking immediate temporary injunctive or other temporary equitable relief in Roanoke County Circuit Court if circumstances so warrant.
- e. In the event of any dispute, claim, or other matter in question arising, Private Entity shall continue its performance diligently during its pendency as if no dispute, claim or other matter in question had arisen. During the pendency of any dispute in connection with the payment of moneys, Private Entity shall be entitled to receive payments for non-disputed items as provided for in this Agreement.
- f. No claim by Private Entity shall be allowed if submitted after final payment.
- g. Contractual claims, whether for money or for other relief, including any disputes as to change orders or extra work, shall be submitted, in writing, no later than sixty (60) calendar days after final payment or payment designated as a final payment; however, written notice of the Private Entity's intention to file such claim must be given as soon as practicable following the Private Entity's awareness of the occurrence or beginning of the work upon which the claim is based. Such notice is a condition precedent to the assertion of any such claim by the Private Entity. A written decision upon any such claims will be made by the Owner or his/her designee within thirty (30) calendar days after submittal of the claim and any practically available additional supporting evidence required by the Owner. The Private Entity may not institute legal action prior to receipt of the Owner's decision on the claim unless the Owner fails to render such decision within one hundred twenty (120) calendar days from submittal of its claim. The decision of the Owner shall be final and conclusive unless the Private Entity within six (6) months of the date of the final decision on a claim or from expiration of the 120 day time limit, whichever occurs first, initiates legal action as provided in Section 2.2 – 4364, of the Code of Virginia. Failure of the Owner to render a decision within said one hundred twenty (120) calendar days shall not result in the Private Entity being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of the Owner's failure to render a decision within said one hundred twenty (120) calendar days shall be Private Entity's right to immediately institute legal action. No administrative appeals procedure pursuant to Section 2.2-4365, of the Code of Virginia, has been established for contractual claims under this Agreement.

ARTICLE XVIII

TERMINATIONS

18.1 TERMINATION FOR CONVENIENCE.

- a. Performance under this Agreement may be terminated by the Owner for convenience, for any reason, with or without cause, in whole or in part at any time. A termination may be effected by delivery to the Private Entity of a notice of termination specifying the extent of work terminated, and the effective date of the termination (thirty [30] calendar days minimum notice).
- b. Upon receipt of a notice of termination, unless otherwise directed by the Owner's Representative, the Private Entity must take the following actions:
 - 1. Stop work to the extent specified in the notice.
 - 2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of the unterminated work.
 - 3. Terminate all orders and subcontracts to the extent that they relate to the work terminated.
 - 4. Settle all outstanding liabilities and claims arising out of the termination of orders and subcontracts.
 - 5. Transfer title to the Owner and deliver as directed by the Owner's Representative: Work in process, completed work, and other material produced as a part of or acquired for the work terminated.
 - (
 - 6. Complete performance of the work not terminated.
 - 7. Take any action that may be necessary, or that the Owner's Representative may direct, for protecting and preserving any property related to this Agreement that is in the possession of the Private Entity and in which the Owner has or may acquire an interest.
- c. At any time, the Private Entity may submit to the Owner's Representative a list, certified as to quantity and quality, of termination inventory not previously disposed of, and may request the Owner to remove inventory items or enter into a storage agreement covering them. Not later than fifteen (15) calendar days after receiving this request, the Owner will accept title to the items and remove them or enter into a storage agreement. The list will be subject to verification by the Owner's Representative upon removal of the items or, if the items are stored, within forty five (45) days after submission of the list.
- d. After termination, the Private Entity must submit to the Owner's Representative a termination claim in the form and with the certification prescribed by the Owner's Representative. The claim must be submitted promptly, but in no event more than sixty (60) days after the effective date of termination, unless an extension in writing is granted by the Owner's Representative. However, if the Owner's Representative determines that the facts justify such action, any termination claim may be received and acted upon at any time after the 60 day period. Upon failure of the Private Entity to submit a termination claim within the time allowed, the Owner's Representative may determine, on the basis of the information available, the amount, if any, due the Private Entity by reason of the termination.
- e. If the Private Entity and the Owner's Representative fail to agree on the amount to be paid to the Private Entity by reason of the termination, the Owner will only pay the Private Entity the amount payable based on the progress obtained on the Project at the time of the termination. In no event shall the Private Entity be paid for any work not actually and properly provided to and approved by Owner and no claim for lost profits or overhead shall be allowed.
- f. The total sum to be paid to the Private Entity may not exceed the total Agreement price as reduced by the payments made and as further reduced by the Agreement price of work not terminated. Except for normal spoilage, and except to the extent that the Owner expressly assumed the risk of loss, there will be excluded from the amounts payable to the Private Entity under paragraph e above, the fair value, as reasonably determined by the Owner's Representative, of property destroyed, lost, stolen, or damaged so as to become undeliverable to the Owner, or to a buyer.
- g. The Private Entity has the right of review under the "Claims and Disputes" clause of any determination made by the Owner's Representative under paragraph d or e above, except that, if the Private Entity has failed to submit its termination claim within the time provided in paragraph d above and has failed to request an extension of time, there may be no right of review.

- h. In arriving at the amount due the Private Entity, there must be deducted:
 - 1. Any valid claim that the Owner may have against the Private Entity under this Agreement; and
 - 2. The agreed price for or the proceeds of sale of materials, supplies, or other things kept by the Private Entity or sold and not recovered by or credited to the Owner.
- i. If the termination is partial, the Private Entity must file with the Owner's Representative a request in writing for an equitable adjustment of the price specified in the Agreement relating to the continued portion of the Agreement.

18.2 TERMINATION FOR DEFAULT.

- a. The Owner may, subject to paragraph d below, by written notice of default to the Private Entity, terminate this Agreement in whole or in part if the Private Entity fails to:
 - 1. Complete any of the material requirements of this Agreement within the time specified in the Agreement or any extension;
 - 2. Make progress, so as to endanger performance of this Agreement; or
 - 3. Provide good services and/or workmanship and materials as called for by the Agreement; or
 - 4. Perform any of the other material provisions of this Agreement (but see subparagraph b following).
- b. Owner may terminate this Agreement under paragraph a only if the Private Entity does not commence to cure the failure within ten (10) calendar days (or more if authorized in writing by the Owner's Representative) after receipt of the notice from the Owner's Representative specifying the failure.
- c. Owner may terminate this Agreement without opportunity to cure if Private Entity declares bankruptcy or is involuntarily placed into bankruptcy.
- d. If the Owner terminates this Agreement in whole or in part based on the Private Entity's default, it may acquire similar supplies or services or complete the work as Owner deems appropriate, and the Private Entity will be liable to the Owner for any excess costs. However, the Private Entity must continue the work not terminated.
- e. If this Agreement is terminated for default, the Owner may require the Private Entity to transfer title and deliver to the Owner, as directed by the Owner's Representative, any completed supplies, partially completed supplies, and materials, parts, tools, dies, jigs, fixtures, plans, drawings, specifications, electronic copies, information, and contract rights that the Private Entity has specifically produced or acquired for the terminated portion of this Agreement. Upon direction of the Owner's Representative, the Private Entity must also protect and preserve property in its possession in which the Owner has an interest.
- f. The Owner will pay the Agreement price for completed items delivered and accepted. The Private Entity and Owner's Representative may agree on the amount of payment for items delivered and accepted under paragraph e above for the protection and preservation of the property. Failure to agree will be a dispute under Section 17.5 of this Agreement. The Owner may withhold from these amounts a reasonable sum necessary to protect the Owner against loss because of bona fide outstanding claims against the Private Entity.
- g. If, after termination, it is determined that the Private Entity was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for convenience and such termination shall be deemed to have been for convenience.
- h. The rights and remedies of the Owner under this Section 18.2 are in addition to any other rights and remedies provided by law or under this Agreement.

18.3 TERMINATION FOR OWNER DEFAULT.

- a. The Private Entity may terminate the Agreement for default if, through no act or fault of the Private Entity or a Prime Construction Contractor, Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the work under direct or indirect contract with the Private Entity, the Owner has not issued a certificate for payment or has not notified the Private Entity of the reason for withholding the certificate for payment within thirty (30) calendar days of receipt of a valid and complete invoice. However, before Private Entity may terminate under this paragraph, Private Entity shall give Owner written notice of such default, and ten (10) days to cure such default.
- b. The Private Entity may terminate the Agreement for default if, through no fault of the Private Entity, Prime Construction Contractor, Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the work under direct or indirect contract with the Private Entity, Prime Construction Contractor or Contractor, repeated suspensions, delays or interruptions of the entire work or significant portions thereof have been solely caused by the Owner, other than resulting from a termination for convenience or termination of Private Entity for default, as described in the Agreement, and such repeated suspensions, delays, or interruptions constitute in the aggregate more than sixty (60) calendar days in any three hundred sixty five (365) calendar day period. However, as a condition precedent to such action the Private Entity shall give proper notice to the Owner and Owner's Representative of each such claimed delay within ten (10) days of its occurrence.

ARTICLE XIX

INSPECTION AND ACCEPTANCE

19.1 INSPECTION OF PROFESSIONAL SERVICES.

The Owner's Representative may, at any time or place, inspect the services performed and the products, including documents and reports, provided that no such inspection shall be conducted in a manner that materially or unreasonably interferes with performance of the work. The Owner's Representative may reject any services or products that do not meet the requirements of this Comprehensive Agreement.

19.2 INSPECTION AND ACCEPTANCE.

- a. Owner inspection and testing of materials and workmanship will be made at reasonable times at the site of the work or off the site as the Owner's Representative may direct. Off-site inspection or testing does not relieve the Private Entity of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Owner after acceptance of the completed work under the terms of paragraph f of this section.
- b. The Private Entity must, without charge, replace any material or correct any workmanship found by the Owner not to conform to the Agreement requirements, unless the Owner consents to accept such material or workmanship with an appropriate adjustment in Agreement price. The Private Entity must promptly segregate and remove rejected material from the premises.

- c. If the Private Entity does not promptly replace rejected material or correct rejected workmanship, upon seven (7) days advance notice to the Private Entity and opportunity to cure, the Owner may, by contract or otherwise, replace or correct it and charge the cost to the Private Entity.
- d. The Owner may examine completed work by removing or tearing it out. The Private Entity must replace or correct any work found not to conform to Agreement requirements. If work is torn out and found to comply with Agreement requirements, the Owner's Representative must make an equitable adjustment for the services provided for the inspection and replacement of the work pursuant to the provisions for a Change Order hereunder.
- e. The Owner will inspect the work as soon as practicable after completion.

19.3 TECHNICAL SUPERVISION.

- a. Performance of the work is subject to technical input by representatives of the Owner. Technical input includes suggestions to the Private Entity which fill in technical details, suggest possible lines of inquiry, or otherwise clarifies the scope of work, but do not constitute new scopes of work.
- b. The Owner reserves the right to use Project management support services (PMSSC) personnel, or other qualified personnel under contract to the Owner, to provide such technical supervision.

19.4 APPROVAL OF DESIGN.

- a. The Owner's Representative must approve all final plans and specifications. However, phased or fast track construction may commence prior to approval of final plans and specifications, provided the Owner's Representative has approved plans and specifications covering only that phase of the work. The Owner's Representative's review will be primarily for general arrangement and compliance with Owner requirements included as part of the Agreement. Owner's Representative's approval shall not be construed as:
 - 1. Permitting any departure from the Agreement requirements, without specific prior written approval.
 - 2. Relieving the Private Entity of responsibility for any errors including, but not limited to, details, dimensions and materials;
 - 3. Relieving the Private Entity of responsibility for compliance with all applicable codes of local, state, or federal codes, regulations and laws.
- b. After approval of plans and specifications, the Private Entity shall be responsible for revising plans and specifications to correct all deficiencies. Copies of revised plans and specifications will be furnished to the Owner's Representative. There will be no modification to any fee or to the GMP to the Agreement, as a result of corrections of such deficiencies.

19.5 PROJECT CLOSEOUT.

Unless specified for an earlier date elsewhere in this Agreement, the Private Entity must process all documents, change order documentation, claim submissions, complete all Project closeout items, provide warranties, as-built drawings, and submit a final report certifying that this action has been taken prior to the date of Final Completion.

19.6 ASBESTOS FREE AND LEAD-BASED PAINT FREE CERTIFICATION.

The Private Entity must certify that no asbestos-containing building materials or lead-based paints (interior or exterior) were used in this Project. The Private Entity must include completed and unaltered asbestos free and lead-based paint certifications as a closeout submittal document. The only acceptable alternative for asbestos and lead based paint certification is to conduct a post-construction asbestos and lead paint survey in accordance with AHERA requirements.

ARTICLE XX

MISCELLANEOUS

20.1 REPRESENTATIONS AND WARRANTIES.

- a. Private Entity represents and warrants that it has legal authority to enter into this Agreement and perform all of its obligations herein, that all Work under this Agreement shall be performed by appropriately licensed entities or individuals when required, and that the execution of this Agreement by it has been duly and properly authorized. As a condition to this Agreement's effectiveness, Private Entity shall provide to Owner a certificate in form and with attachments satisfactory to Owner showing to Owner's satisfaction Private Entity's legal existence and authority to enter into this Agreement.
- b. Owner represents and warrants that it has legal authority to enter into this Agreement and perform all its obligations herein and that the execution of this Agreement by it has been duly and properly authorized, including approval by the local governing body in accordance with Va. Code § 56-575.16 (as evidenced by the signature of approval on behalf of the Western Virginia Regional Jail Authority affixed to this Agreement).

20.2 NONDISCRIMINATION.

- a. During the performance of this Agreement, the Private Entity agrees as follows:
 - (1) The Private Entity will not discriminate against any Subcontractor, employee, or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by State law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Private Entity. The Private Entity agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - (2) The Private Entity, in all solicitations or advertisements for employees placed by or on behalf of the Private Entity, will state that such Private Entity is an equal employment opportunity employer.
 - (3) Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- b. The Private Entity will include the provisions of the foregoing Subsections a (1), (2), and (3) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- c. Pursuant to the Code of Virginia, Section 2.2-4343.1, be advised that the Western Virginia Regional Jail Authority does not discriminate against faith-based organizations.

20.3 DRUG-FREE WORKPLACE.

- a. During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf

of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- b. For the purpose of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract, or Agreement, awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.
- c. The Contractor shall post a copy of the policy in a conspicuous place at the jobsite and assure that all Contractor, subcontractor, and supplier personnel entering the jobsite are informed of the policy.

20.4 NOTICES.

- a. All notices and demands by any party to any other shall be given in writing and sent by a nationally-recognized, overnight courier or by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To the Owner:

Western Virginia Regional Jail Authority
Attn: Charlie Poff, Superintendent
(Address to be provided)

Telephone: (540) 387-6253
Telefax: (540) 387-6203

With a copy to:

Jim H. Guynn, Jr.
Guynn, Memmer, & Dillon, P.C.
P.O. Box 20788
Roanoke, VA 24018

Telephone: (540) 387-2320
Telefax: (540) 389-2350

With a copies to:

Owner's Representative
Attn: Warren Walker, Vice President
Construction Dynamics Group, Inc. an ARCADIS Company
9861 Broken Land Parkway, Ste 254
Columbia, MD 21046
Telephone: (410) 381-1990
Telefax: (410) 381-0109

Owner's Representative
Attn: Bradley K. Spain, Construction Manager
Construction Dynamics Group, Inc. an ARCADIS Company
(Address to be provided)

Telephone: (910) 263-0520
Telephone: (to be provided)

To Private Entity:

Jeffrey S. Boehm, Vice President
Howard Shockey & Sons, Inc.
1057 Martinsburg Pike
Winchester, VA 22603
Telephone: (540) 665-3246
Telefax: (540) 665-3201

With a copy to:

Charles E. Wall, Esquire
Williams Mullen, A Professional Corporation
1021 East Cary Street, Suite 1700
Richmond, VA 23219
Telephone: (804) 643-1991
Telefax: (804) 783-6507

- b. Any party may, upon prior notice to the others, specify a different address for the giving of notice. Notices shall be effective one day after sending if sent by overnight courier or three (3) business days after sending if sent by certified mail, return receipt requested.

20.5 SUCCESSORS AND ASSIGNS.

Except as expressly otherwise provided, all of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may not be assigned without the prior written consent of the parties to this Agreement.

20.6 NO WAIVER.

The failure of Owner to insist upon the strict performance of any provisions of this Agreement, the failure of Owner to exercise any right, option or remedy hereby reserved, or the existence of any course of performance hereunder shall not be construed as a waiver of any provision hereof or of any such right, option or remedy or as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. The consent or approval by Owner of any act by Private Entity requiring Owner's consent or approval shall not be construed to waive or render unnecessary the requirement for Owner's consent or approval of any subsequent similar act by Private Entity. No provision of this Agreement shall be deemed to have been waived unless such waiver shall be in writing signed by the party to be charged.

20.7 SEVERABILITY

If any term or provision of this Agreement shall be determined to be invalid or unenforceable in any respect, it shall be replaced with a substantially similar provision to the greatest extent possible and the Agreement shall remain in full force and effect.

20.8 COUNTERPARTS.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of such counterparts together shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for the other counterpart.

20.9 GOVERNING LAW.

This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia. Venue for any litigation arising from this Agreement shall only be proper in the Roanoke County Circuit Court, or in the Roanoke County General District Court if the amount in controversy is within the jurisdictional limit of such court, and all parties to this Agreement voluntarily submit to the jurisdiction and venue of such courts, regardless of the actual location of such parties. The provisions of this Agreement shall not be construed in favor of or against either party but shall be construed according to their fair meaning as if both parties jointly prepared this Agreement.

20.10 APPROPRIATION AND PLAN OF FINANCE.

The Owner represents and warrants to the Private Entity that (i) the Owner has issued its Western Virginia Regional Jail Authority Regional Jail Facility Revenue Bonds, Series 2007, and its Regional Jail Facility Revenue Anticipation Notes, Series 2007 (collectively, the "Authority's Bonds"), (ii) a portion of the net proceeds of the Authority's Bonds in the aggregate amount of \$101,020,349.78 (the "Bond Proceeds") are being held by the indenture trustee for the Authority's Bonds for payment of the costs of the Project, and (iii) the Owner shall make or cause to be made payments to the Private Entity as specified in this Agreement and the other Contract Documents from the proceeds of the Authority's Bonds and any other moneys lawfully available to the Authority. The Private Entity shall cooperate in executing any documents reasonably necessary to aid Owner in implementing its plan of finance for the Project.

20.11 GOVERNING LAW.

This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia. Venue for any litigation arising from this Agreement shall be proper in the Roanoke County Circuit Court, or in the Roanoke County General District Court if the amount in controversy is within the jurisdictional limit of such court, and all parties to this Agreement voluntarily submit to the jurisdiction and venue of such courts, regardless of the actual location of such parties. The provisions of this Agreement shall not be construed in favor of or against either party but shall be construed according to their fair meaning as if both parties jointly prepared this Agreement.

20.12 FINANCIAL STATEMENTS.

Private Entity agrees to provide Owner with copies of its complete and current financial statements on an annual basis, or more frequently if reasonably requested by Owner. The Private Entity may designate such financial statements as confidential financial information exempt from release under the Virginia Freedom of Information Act (FOIA) by following the procedure for such designation indicated in FOIA, the Owner's PPEA implementation procedures, and Section 20.16 hereof.

20.13 COPY OF AGREEMENT TO AUDITOR OF PUBLIC ACCOUNTS.

Owner shall submit a copy of this Agreement to the Virginia Auditor of Public Accounts within thirty (30) days of its effective date.

20.14 APPROVAL BY WESTERN VIRGINIA REGIONAL JAIL AUTHORITY AS A CONDITION PRECEDENT TO AGREEMENT'S EFFECTIVENESS.

It shall be a condition precedent to this Agreement's effectiveness that it first be approved by Western Virginia Regional Jail Authority, Virginia. By its execution of this Agreement, the Authority certifies such approval.

20.15 CERTIFICATIONS.

Private Entity has executed and provided to Owner a Vendor's Certification (Exhibit I) contemporaneously with the execution of this Agreement. Private Entity shall require all subcontractors who will perform more than \$10,000.00 of work pursuant to this Agreement to execute this document (Exhibit I) prior to commencement of such subcontractor's work.

20.16 RECORDS.

a. If the Private Entity believes that any work product or any other document or item subject to transmittal to or review by the Owner under the terms of this Agreement or any other Contract Document contains trade secrets, financial information or other information exempt or protected from disclosure pursuant to applicable law, the Private Entity shall use its reasonable efforts to identify such information prior to such transmittal or review, and the Owner shall confer an appropriate means of ensuring compliance with applicable laws prior to transmittal or review.

b. The Owner recognizes that certain work product and other documents or materials of which the Owner obtains a copy may contain trade secrets, financial information or other information exempt from disclosure under applicable law. Should any such items become the subject of a request for public disclosure, the Owner shall respond as follows:

1. The Owner shall use reasonable efforts to immediately notify the Private Entity of such request and the date by which it anticipates responding.
2. The Private Entity must then assert in writing to the Owner any claim that such items are protected from disclosure.
3. If the Private Entity fails to make such assertion within three (3) business days after the Owner notifies the Private Entity of its intended response, the Owner shall have the right to make such disclosure.
4. If the Private Entity makes a timely assertion that the requested items contain trade secrets, financial information or other information exempt from disclosure or otherwise protected under applicable law, the Owner and the Private Entity shall seek judicial declaration of the rights of the parties. Until such declaration is made, the Owner will maintain the confidentiality of such items.

If the Owner's denial of a request for disclosure of items is challenged in court, the Private Entity shall assist the Owner in its defense and shall indemnify the Owner for direct damages assessed and reasonable costs the Owner incurs in such defense, excluding any damages or costs resulting from the Owner's negligence.

20.17 ETHICS IN PUBLIC CONTRACTING

The provisions, requirements, and prohibitions as contained in Sections 2.2-4367 through 2.2-4377, of the Va. Code, pertaining to bidders, offerors, contractors, and subcontractors are applicable to this Agreement.

20.18 HEADINGS

The captions and headings in this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of this Agreement.

20.19 MINORITY & WOMEN-OWNED BUSINESS ENTERPRISE AND SMALL BUSINESS CERTIFICATION

The Private Entity shall use reasonable efforts to use minority and women-owned business enterprises and small businesses for work on the Project. The Private Entity shall complete and submit the "Minority & Women-Owned Business Enterprise and Small Business Certification" form from time to time as requested by the Owner's Representative. Failure to complete and sign this statement is considered a material violation of the Agreement.

20.20 ENTIRE AGREEMENT.

This Agreement and the attachments and exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understandings between Private Entity and Owner concerning the Project, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. No alteration, amendment, change or addition to this Agreement shall be binding upon Private Entity or Owner unless reduced to writing and signed by each party. Extracts from Private Entity's Conceptual Phase and Detailed-Phase proposals at Exhibit B are attached and incorporated by reference for purposes of providing details concerning the overall intent of the parties.

20.21 WAIVER OF CLAIMS FOR CONSEQUENTIAL DAMAGES.

The Owner and the Private Entity waive claims against the other for consequential damages arising out of or relating to this Agreement or any of the Contract Documents. Nothing contained in this paragraph shall be deemed to preclude an award of liquidated damages when applicable in accordance with this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement by their duly authorized representatives.

Attest/Witness:

HOWARD SHOCKEY & SONS, INC.

Karen T. Butler
Karen T. Butler
Marketing Coordinator
Typed or Printed Name and Title

By Jeffrey S. Boehm
Jeffrey S. Boehm, Vice President

Attest/Witness:

WESTERN VIRGINIA REGIONAL JAIL AUTHORITY, VIRGINIA

Typed or Printed Name and Title

By _____
Gerald Holt, Chairman

Appropriation and Funds Required
for this Agreement Certified

Treasurer, WVRJA

Date: _____

Account #: _____

The Western Virginia Regional Jail Authority hereby agrees and approves this comprehensive agreement,

By: _____

Its: _____

Comprehensive Agreement
Between Western Virginia Regional Jail Authority and Howard Shockey Sons, Inc.

EXHIBIT "C"

CLARIFICATIONS AND ASSUMPTIONS

ITEM	Cost Reduction Item	Approximate Gross Installed Savings (\$)
HSM-9	Substitute 3" Water Meter for 8" Water Meter	\$249,656
30	Change light fixtures within secure perimeter from maximum security (14 gauge metal) to minimum security (18 gauge metal)	PENDING
C1.1	Eliminate HDPE Knitted Privacy Fabric From all Chain Link Fencing (Sect. 02821)	\$20,000
C1.2	Leave excess excavated material soil material on site in lieu of haul off site (approx. 20,000CY)	\$100,000
C1.6	Eliminate rebar positioners	\$3,000
C1.7	Carlisle .060 TPO "White" 12X100' rolls in lieu of Carlisle "Sure White" (Div. 7)	\$53,657
C1.8	22 Gauge Galvanized painted Kynar 500 in Lieu of .050 Aluminum Coping & Drip Edge	\$22,000
C1.9	Electrical Metallic Tubing (EMT) for Detention Equipment in Lieu of Galvanized Rigid Steel (GRS) Conduit not within the secure perimeter	\$73,000
C1.10	14 Gauge Black Powder Coated Steel Video Visitation Enclosure With 3/8" Protective Polycarbonate Screen in Lieu of a 16 Gauge Stainless Steel Video Visitation Enclosure as Specified	\$7,125
C1.11	Replace Main Sprinkler Piping With Sch. 10 instead of sch. 40 Piping	\$72,500
C1.13	Reduce Food Service Equipment Requirements	PENDING
		\$ 600,938
Interim Agreement Contingency \$		1,050,000
Subtotal \$		1,650,938
Adjustment by mutual agreement \$		(230,000)
Revised Contingency Amount in Exhibit D \$		1,420,938

NOTE: The Owner will furnish inmate room bunks for installation by the Private Entity.

AGREEMENT
Between Western Virginia Regional Jail Authority
and Howard Shockey & Sons, Inc.

EXHIBIT "D"
GUARANTEED MAXIMUM PRICE

Reimbursable Costs ¹

Site Construction	<u>\$3,571,702</u>	
VDOT Construction Costs	<u>in site constr</u>	
Building Construction	<u>\$66,227,625</u>	
Permits	<u>\$9,656</u>	
Utility Connection Fees (Allowance)	<u>\$100,000</u>	
Builders Risk Insurance	<u>N/A</u>	
Inspection and Testing	<u>in bldg constr</u>	
Furniture, Fixtures & Equipment	<u>by Owner</u>	
Private Entity Contingency 2	<u>\$1,420,938</u>	
Financing	<u>N/A</u>	
Legal, Insurance, Accounting (Project Related)	<u>N/A</u>	
Subtotal of Reimbursable Costs		\$71,329,921

Fixed Costs

Architecture/Engineering Fee & Expenses	<u>N/A</u>	
Private Entity Fee & Expenses	<u>\$3,056,297</u>	
General Contractor Fee	<u>\$3,733,782</u>	
Subtotal of Fixed Costs		\$6,790,079

GUARANTEED MAXIMUM PRICE = Reimbursable + Fixed Fee Costs **\$78,120,000**
(Not to Exceed)

1. Individual lines items in this cost category may vary, however the sum of the individual line items will not exceed the Subtotal of Reimbursable Costs.
2. The parties agree to work together to identify Value Engineering items acceptable to the Authority in order to increase the Contingency to at least \$2,000,000. The Contingency amount will not be a part of "shared savings" and any unused amount will be credited back to the Authority.

Comprehensive Agreement
Between Western Virginia Regional Jail Authority and Howard Shockey & Sons,
Inc.

EXHIBIT "E"

DRAW SCHEDULE

See attached Draw Schedule dated 1/8/2007.

This is an approximation of the anticipated draw schedule for planning purposes only and does not represent actual billing

Western Virginia Regional Jail

Rough Draw Schedule for Accounting Purposes Only

As of 1/8/07

Feb-07	\$	789,137.00
Mar-07	\$	600,000.00
Apr-07	\$	800,000.00
May-07	\$	1,000,000.00
Jun-07	\$	2,000,000.00
Jul-07	\$	3,000,000.00
Aug-07	\$	5,219,359.00
Sep-07	\$	5,219,359.00
Oct-07	\$	8,229,359.00
Nov-07	\$	8,229,359.00
Dec-07	\$	6,863,819.00
Jan-08	\$	6,863,819.00
Feb-08	\$	4,363,716.00
Mar-08	\$	4,363,716.00
Apr-08	\$	4,363,716.00
May-08	\$	4,363,716.00
Jun-08	\$	3,858,341.00
Jul-08	\$	2,858,341.00
Aug-08	\$	2,448,357.00
Sep-08	\$	1,469,204.00
Oct-08	\$	648,341.00
Nov-08	\$	648,341.00
Dec-08	\$	300,000.00

\$ 78,500,000.00

Comprehensive Agreement
Between Western Virginia Regional Jail Authority and Howard Shockey & Sons,
Inc.

EXHIBIT "F"

PAYMENT APPLICATION

Attached is a sample AIA Payment Application form G702/CMa (6 pages)

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702/CMa

CONSTRUCTION MANAGER-ADVISER EDITION

PAGE ONE OF twelve PAGES

TO OWNER:

PROJECT: number

Western Virginia Regional Jail Authority

Distribution to:

Address

xx/xx/xxxx

City, State, Zip

PERIOD TO:

☒ OWNER

FROM CONTRACTOR:

Howard Shockey & Sons, Inc.

Address

CONSTRUCTION DYNAMICS GROUP, INC.

VIA CONSTRUCTION MANAGER:

VIA ARCHITECT: n/a

CONTRACT FOR:

CONTRACT DATE: xx/xx/xxxx

☐ ARCHITECT

☒ CONTRACTOR

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

1. ORIGINAL CONTRACT SUM

2. Net change by Change Orders

3. CONTRACT SUM TO DATE (Line 1 + 2)

4. TOTAL COMPLETED & STORED TO DATE (Column G on all G703s)

5. RETAINAGE:

a. 5 % of Completed Const. Work \$ (Column D + E on G703 - Construction)

b. 5 % of Stored Const. Material \$ (Column F on G703- Construction)

Total above

6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total)

8. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)

9. CURRENT PAYMENT DUE

10. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approved this Month		
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order	\$0.00	

CONTRACTOR:

By: _____

State of: _____

Subscribed and sworn to before me this _____ day of _____

Notary Public: _____

My Commission expires: _____

Notary Public: _____

My Commission expires: _____

County of: _____

Date: _____

CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Construction Manager and Architect certify to the Owner that to the best of their knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

CONSTRUCTION MANAGER:

By: _____

ARCHITECT: _____

By: n/a

Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

Comprehensive Agreement
Between Western Virginia Regional Jail Authority and Howard Shockey & Sons, Inc.

EXHIBIT "G"

PROJECT SCHEDULE MILESTONES

Notice to Proceed	2/12/2007
Substantial Completion	1/11/2009
Final Completion (700 days from NTP)	1/12/2009

Comprehensive Agreement
Between WVRJA and Howard Shockey & Sons, Inc.

EXHIBIT "I"

VENDOR'S CERTIFICATION

I (we) hereby certify that if the contract is awarded to our firm, partnership, or corporation, that no member of the Western Virginia Regional Jail Authority, or members of his or her immediate family, including spouse, parents, or children, or any person representing or purporting to represent any member or members of the Western Virginia Regional Jail Authority, has received or has been promised, directly or indirectly, any financial benefit, by way of fee, commission, finder's fee, political contribution, or any similar form of remuneration on account of the acts of awarding and/or executing this contract.

Handwritten Signature of Authorized Principal(s):



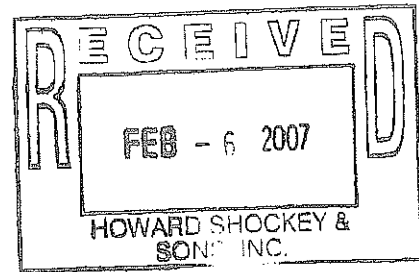
Name: JEFF BOEHM

Title: VICE PRESIDENT

Name of Firm/Partnership/Corporation: Howard Shockey & Sons, Inc.

Date: 8 FEB 07

January 29, 2007



Mr. Jeff Boehm
Vice President
Howard Shockey & Sons, Inc.
P.O. Box 2530
Winchester, Virginia 22604-1730

Re: Western Virginia Regional Jail Authority PPEA Project

Dear Mr. Boehm:

This letter shall serve as an addendum to the interim agreement ("Agreement") pursuant to §56-575.9:1 of the Virginia Public/Private Education Facilities and Infrastructure Act of 2002, as amended (the "PPEA"), between the Western Virginia Regional Jail Authority ("WVRJA") and Howard Shockey & Sons, Inc. ("Shockey"), dated January 2, 2007.

WVRJA and Shockey have made substantial progress in negotiating the terms of a comprehensive agreement for the construction of the regional jail in Roanoke County, Virginia. Negotiations are continuing in good faith, and both parties acknowledge that time is of the essence.

At this point, the parties anticipate that a comprehensive agreement will be finalized and ready for execution on or about February 10, 2007.

Please acknowledge Shockey's agreement with the terms of the Agreement in the space provided below and return this letter to my attention.

WESTERN VIRGINIA REGIONAL JAIL AUTHORITY

By: Gerald S. Holt
Gerald Holt, Sheriff
Chairman

Jan 29, 2007

Agreed:

HOWARD SHOCKEY & SONS, INC.

By: Jeffrey S. Boehm
Jeffrey S. Boehm
President

29 JAN 07

January 2, 2007

Mr. Jeff Boehm
Vice President
Howard Shockey & Sons, Inc.
P.O. Box 2530
Winchester, VA 22604-1730

Re: Western Virginia Regional Jail Authority PPEA Project

Dear Mr. Boehm:

This letter shall serve as an interim agreement ("Agreement") pursuant to §56-575.9:1 of the Virginia Public/Private Education Facilities and Infrastructure Act of 2002, as amended (the "PPEA"), between the Western Virginia Regional Jail Authority ("WVRJA") and Howard Shockey & Sons, Inc. ("Shockey"). This agreement relates to Shockey's PPEA proposal ("the Proposal") to WVRJA dated October 31, 2006 for the construction of the regional jail in Roanoke County, Virginia. The proposal is incorporated herein. WVRJA has accepted the proposal and the authority board has authorized the WVRJA to enter into this interim agreement, and to move forward with the negotiation of a comprehensive agreement with Shockey.

In the course of discussions between WVRJA and Shockey as part of the review of the proposal, WVRJA and Shockey discussed the possibility of certain design changes to the project relating to value engineering and constructability. Under this Agreement, the parties agree that the WVRJA and Shockey will work together to achieve such design modifications with appropriate mutually agreeable price modification.

The parties agree that Shockey is permitted to commence certain pre-construction activities related to the project upon execution of this Agreement. These activities are limited to those which are essential to the pre-construction of the project whether or not the parties agree upon any design modifications. By way of example and not by limitation, these activities could include site investigation and/or geotechnical engineering services at the site, procuring necessary materials, entering into agreements with certain subcontractors, and similar activities. If for any reason Shockey and WVRJA do not enter into a comprehensive agreement to construct the regional jail, WVRJA agrees to reimburse Shockey its actual costs incurred in pre-construction activities undertaken pursuant to this agreement. All work product arising from

Shockey's performance of the services outlined in this interim Agreement shall become property of WVRJA.

Shockey will be compensated by the WVRJA for the Services in accordance with the terms of the Comprehensive Agreement. However, if the parties either cease negotiating a Comprehensive Agreement for the Project or fail to enter into a Comprehensive Agreement by January 30, 2007, the WVRJA will compensate Shockey for the Services in an amount equal to (i) all of Shockey's allowable costs associated with the Services (the "Costs"), plus (ii) ten percent (10%) of the Costs for overhead and profit. Shockey may make monthly applications for payment to the WVRJA, and payment shall be due to Shockey within thirty (30) days.

WVRJA and Shockey have agreed to a Contract Cost Limit which is set forth in exhibit 1 attached hereto and incorporated herein by reference. The Contract Cost Limit means the initial limit established at the time of execution of the Interim Agreement on total amounts payable to the Private Entity under the Comprehensive Agreement. This cost limit shall not be exceeded in the Comprehensive Agreement's GMP.

Please acknowledge Shockey's agreement with the terms of this interim Agreement in the space provided below and return this letter to my attention.

WESTERN VIRGINIA REGIONAL JAIL
AUTHORITY

By: Gerald B. Holt
Gerald Holt, Sheriff
Chairman *Jan. 3, 2007*

Agreed:

HOWARD SHOCKEY & SONS, INC.

By: Jeffrey S. Boehm *2 JAN 07*
Jeffrey S. Boehm
Vice President

Attached: Exhibit #1

INTERIM AGREEMENT
Between Western Virginia Regional Jail Authority
and Howard Shockey & Sons, Inc.

EXHIBIT "1"
ITEMS AND PRICES SUMMARY SHEET

Reimbursable Costs ¹

Site Construction	<u>\$3,571,702</u>	
VDOT Construction Costs	<u>in site constr</u>	
Building Construction	<u>\$66,828,563</u>	
Permits	<u>\$9,656</u>	
Utility Connection Fees (Allowance)	<u>\$250,000</u>	
Builders Risk Insurance	<u>N/A</u>	
Inspection and Testing (per specifications)	<u>in bldg constr</u>	
Furniture, Fixtures & Equipment	<u>by Owner</u>	
Private Entity Contingency 2	<u>\$1,050,000</u>	
Financing	<u>N/A</u>	
Legal, Insurance, Accounting (Project Related)	<u>N/A</u>	
Subtotal of Reimbursable Costs		\$71,709,921

Fixed Costs

Architecture/Engineering Fee & Expenses	<u>N/A</u>	
Private Entity Fee & Expenses	<u>\$3,056,297</u>	
General Contractor Fee	<u>\$3,733,782</u>	
Subtotal of Fixed Costs		\$6,790,079

<u>CONTRACT COST LIMIT</u> = Reimbursable + Fixed Fee Costs	<u>\$78,500,000</u>
(Not to Exceed)	

1. Individual lines items in this cost category may vary, however the sum of the individual line items will not exceed the Subtotal of Reimbursable Costs.
2. The parties have worked together to identify Value Engineering items acceptable to the Authority that all parties believe will increase the Private Entity Contingency to at least \$2,000,000. This final Private-Entity Contingency amount will not be a part of "shared savings" and any unused amount will be credited back to the Authority.

Comprehensive Agreement
Between WVRJA and Howard Shockey & Sons, Inc.

EXHIBIT "J"

PROJECT CLOSEOUT

SUBSTANTIAL COMPLETION PREREQUISITES

All parties recognize that the Western Virginia Regional Jail project must be substantially completed so that the facility may be used for its intended use. Once occupied, the Private Entity will have very limited access to the facility. In addition, this project is a LEED environmental project, which requires special procedures prior to substantial completion.

Before requesting inspection for certification of Substantial Completion, complete the following:

1. Finalize and deliver copies of all O&M Manuals.
2. Finalize all training unless an extension is authorized by the Owner's Representative in writing.
3. Finalize and deliver "as-built" record drawings.
4. Submission of certificate of final inspection from the County and/or State agencies in accordance with applicable codes, laws and ordinances.
5. The Private Entity is responsible for securing any final occupancy permits required by the County and/or State agencies.
6. Perform the first final cleaning as specified.
7. Obtain inspection of fire protection system (sprinkler system) by the Fire Marshall's office and Owner's Insurance Rating Bureau, if required, plus correction of any deficiencies.
8. Provide fully operational HVAC system with air balance testing and energy management system complete and deficiencies corrected.
9. Provide fully operational electrical system, inspection and acceptance by appropriate authorities, and deficiencies corrected.
10. Provide fully operational safety and security systems, inspection and acceptance by appropriate authorities, and deficiencies corrected.
11. All labeling shall be complete as required in the Specifications.
12. All pressure vessels must be inspected and approved by the appropriate state and local authorities.
13. The Health Department, or appropriate agency, must have inspected the facility and any corrections completed to their satisfaction.
14. Two week flush out of the HVAC system to be conducted immediately prior to Substantial Completion to the satisfaction of the Owner's Representative. If optional air contaminant testing is selected per Division 01734, and air samples show concentrations higher than those specified, perform corrective

actions as specified and retest until specified air contamination limits are achieved.

15. Complete all Commissioning Functional Test and Verification procedures to the satisfaction of the Commissioning Agent.
16. All Testing and Balancing (TAB) work and the commissioning of Division 01810 must be completed, unless approved in writing by the Owner's Representative. Exceptions to this are any required seasonal or approved deferred testing.
17. The Private Entity shall complete a contractor's punch list walk-through and provide a written copy of any deficiencies to the Owner's Representative. Coordinate the completion of any deficiencies.
18. Upon completion of the contractor's punch list deficiencies, request a punch list walk-through with the Owner's Representative and Architect, and correct any deficiencies noted.

Upon completion of the prerequisites listed above, the Private Entity shall submit written certification to the Owner's Representative and Architect that the Project is substantially complete, and include a list of all items to be completed or corrected. These items, if any, should not require access to the facility for completion and may include final documentation required. The Architect and Owner's Representative will make an inspection and list those items that are incomplete or, for any reason, unsatisfactory and determine if the work is substantially complete.

Should the Owner's Representative and Architect consider that the work is not substantially complete, the Private Entity shall complete the work, and send a second written certification that the project is substantially complete. The Owner's Representative and Architect shall re-inspect the work and determine if the work is substantially complete.

The Owner may deduct the cost of any further re-inspections by the Owner's Representative and Architect from the final payment to the Private Entity.

**Comprehensive Agreement
Between WVRJA and Howard Shockey & Sons, Inc.**

EXHIBIT "K"

EXTENSIONS TO AGREEMENT TIMES DUE TO UNUSUALLY SEVERE WEATHER

A. Unusually severe weather is any weather that exceeds the average number of weather days as listed below AND affects the major work activities on the critical path of the Project as established by the baseline schedule, as approved by the Owner's Representative.

1) The following schedule represents the mean average of the total number of rain days from the preceding 10 years, exclusive of the current year. This data has been taken from the daily precipitation totals of days where rainfall exceeds 0.1" as compiled by the National Oceanographic and Aeronautic Administration (NOAA) and/or local reporting agencies.

2) Monthly Anticipated Severe Weather Delay (in days through Dec 2006)

Roanoke City, Virginia											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
6	7	6	6	7	8	7	6	7	4	6	6

B. Upon acknowledgement of the Notice to Proceed and continuing throughout the Agreement, the Private Entity will record the occurrence of adverse weather AND the resultant impact to the normally scheduled work. Actual adverse weather delay days must prevent work on critical path activities for 50% or more of the Private Entity's scheduled workday.

C. The number of actual adverse weather delay days, shall include days impacted by actual adverse weather (even if the weather occurred during the previous month), and be calculated chronologically from the first to the last day in each month, and be recorded as full days. If the number of actual adverse weather delay days exceeds the number of days anticipated in paragraph A.2 above, the Owner's Representative will convert any qualifying delays to calendar days giving full consideration for equivalent fair weather workdays, and issue a modification to the Agreement times at the end of the project.

D. Notwithstanding the provisions mentioned above, should the actual number of actual adverse weather delay days, (including supplemental impact days), be less than the number of days anticipated in paragraph A.2 above, the Owner's Representative will calculate a credit and subtract from the running total of time extensions. However, should the running total of delays result in a negative number, no days will be subtracted from the over all Agreement times.

E. Within 3 days of the last impacted day for which the Private Entity desires a time extension, they shall submit a written report listing the days requested and outlining the impacts to the project. The Owner's Representative may request that the report be accompanied by a delay analysis schedule.

F. At the Private Entity's discretion, it may also track impacts to non-critical activities so that in the event that the weather impact is so severe, these activities become critical, a continuous chain of information exists to validate the claim.

G. The Private Entity must give the Owner's Representative written notice on a daily basis on a form to be provided to the Private Entity. The Owner's Representative, based on information provided by the Private Entity and other sources as he/she deems necessary, shall determine whether the claim for weather delay should be allowed or disallowed. The Owner's Representative shall notify the Private Entity of his/her decision in writing.